

No. 14638

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**United States  
Court of Appeals**  
for the Ninth Circuit

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OLE FAGERHAUGH,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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**Transcript of Record**

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**Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.**

**FILED**

**MAR 21 1955**

**PAUL P. O'BRIEN, CLERK**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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San Francisco, California,

Attorneys for Plaintiff and Appellee.



In the United States District Court for the Northern  
District of California, Southern Division

No. 34153

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLE FAGERHAUGH,

Defendant.

(Violation: 2 U.S.C., 192)

Citation for Contempt of Congress.

### INDICTMENT

The Grand Jury charges:

#### Introduction

On Friday, December 4, 1953, at San Francisco, California, within the Northern Judicial District of California, a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives of the United States was conducting an inquiry pursuant to authority conferred upon it by law, and particularly Subsection (q)(2), Section 121 of Public Law 601 of the 79th Congress, and House Resolution 5 of the 83rd Congress. The defendant Ole Fagerhaugh appeared as a witness before that subcommittee at the place and on the date above stated, and was asked a question, which was pertinent to the question then under inquiry before the subcommittee. At the

time and place stated the defendant refused to answer this pertinent question. The allegations of this introduction are adopted and incorporated into the count of this indictment which follows, which count will in addition describe the question which was asked of the defendant and which he refused to answer.

First Count:

Where the defendant was then employed.

A True Bill:

/s/ [Indistinguishable].

Foreman.

/s/ LLOYD H. BURKE,

United States Attorney.

Approved as to Form:

/s/ A. C. N.

Penalty:

Fine of not more than \$1,000 nor less than \$100.00 and imprisonment in a common jail for not less than one month nor more than 12 months.  
\$500.00

[Endorsed]: Filed July 15, 1954.

United States District Court for the Northern  
District of California, Southern Division

At a stated term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of July, in the year of our Lord one thousand nine hundred and fifty-four.

Present: The Honorable O. D. Hamlin,  
District Judge.

This case came on this day *ex parte*. Richard C. Nelson, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant, Ole Fagerhaugh, was present with his attorney, Bertram Edises, Esq.

Defendant was arraigned upon the indictment filed herein against him, stated his true name to be as contained therein, Mr. Edises waived the reading of the indictment and received a copy of indictment.

Motion of defendant for permission to leave jurisdiction of this Court was ordered granted, in accordance with an order this day signed and filed.

Ordered case continued to August 17, 1954, for entry of defendant's plea to indictment.



[Title of District Court and Cause.]

MOTION BY DEFENDANT TO DISMISS  
THE INDICTMENT

The defendant moves that the indictment be dismissed on the following grounds:

1. The defendant validly asserted the privilege against self-incrimination under the Fifth Amendment.

2. The question was not propounded in good faith for the purpose of eliciting information needed by the subcommittee for any valid legislative purpose.

3. The defendant was not directed to answer following his assertion of the privilege.

4. The defendant was denied opportunity to state fully his reasons for declining to answer.

5. The contempt citation was voted by the House of Representatives upon an incomplete record because of the action of the chairman of the subcommittee in arbitrarily striking physically from the record portions of the defendant's answer to the question regarding his place of employment.

6. The refusal to answer was not wilful, but was made in good faith upon the advice of counsel.

7. The indictment does not state facts sufficient to constitute an offense against the United States, for the following reasons:



(A) Subsection (q) (2), Section 121 of Public Law 601 of the 79th Congress, and House Resolution 5 of the 83rd Congress, alleged in the indictment to constitute the authority pursuant to which the subcommittee was conducting its inquiry, is unconstitutional upon its face and as construed and applied by the committee.

(1) The resolution violates the First Amendment because it authorizes the censorship of ideas.

(2) The resolution is unconstitutionally vague and indefinite and is lacking in adequate standards for the guidance of the inquiry.

(B) The question asked of the defendant was not pertinent to the subject then under inquiry before the subcommittee, or to any lawful subject of inquiry by the subcommittee.

(C) The question constituted an unwarranted intrusion into the defendant's private and personal affairs.

This motion to dismiss the indictment is based upon all of the papers and pleadings herein, upon the accompanying memorandum of points and authorities, and upon the affidavit of Bertram Edises submitted herewith.

EDISES, TREUHART, GROSS-  
MAN AND GROGAN,

By /s/ BERTRAM EDISES,  
Attorneys for Defendant.

[Title of District Court and Cause.]

## AFFIDAVIT OF BERTRAM EDISES

State of California

County of Alameda—ss.

Bertram Edises, being first duly sworn, deposes and says:

That he is a member of the bar of this Court and of the State of California and of the United States Supreme Court, and is one of the attorneys for the defendant herein; that annexed hereto, marked Exhibit A, and hereby made a part hereof, is a full, true and exact copy of House Report No. 1584, entitled the "Proceedings Against Ole Fagerhaugh," which was submitted to the House of Representatives on May 11, 1954, and which resulted in the citation of defendant for contempt of Congress, as charged in the indictment.

That annexed hereto, marked Exhibit B, and hereby made a part hereof, is a full, true and exact copy of House Resolution 539, adopted by the House of Representatives on May 11, 1954, certifying the foregoing report to the United States Attorney for the Northern District of California, for the purpose of instituting legal proceedings against the defendant.

That annexed hereto, marked Exhibit C, and hereby made a part hereof, is a full, true and exact copy of the portions of the Congressional Record for May 11, 1954, pages 6030 and 6031,

which contain additional references to the citation of defendant.

Further affiant sayeth not.

/s/ BERTRAM EDISES.

Subscribed and sworn to before me this 16th day of August, 1954.

/s/ EDWARD R. GROGAN,  
Notary Public in and for the County of Alameda,  
State of California.

## EXHIBIT A

### House of Representatives

83d Congress 2d Session  
Report No. 1584

Proceedings Against Ole Fagerhaugh

May 11, 1954—Ordered to be printed

Mr. Velde, of Illinois, from the Committee on Un-American Activities, submitted the following

### Report

Citing Ole Fagerhaugh

The Committee on Un-American Activities, as created and authorized by the House of Representatives through the enactment of Public Law

## Exhibit A—(Continued)

601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, caused to be issued a subpoena to Ole Fagerhaugh, 2265 East 19th Street, Oakland, Calif. The said subpoena directed Ole Fagerhaugh to be and appear before said Committee on Un-American Activities on December 1, 1953, at the hour of 10 a.m., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee. The subpoena served upon said Ole Fagerhaugh is set forth in words and figures as follows:

By authority of the House of Representatives of the Congress of the United States of America, to William A. Wheeler and/or Chief of Police Lester J. Divine: You are hereby commanded to summon Ole Fagerhaugh, 2265 East Nineteenth Street, Oakland, Calif., business, Illinois Glass Co., 601 36th Avenue, Oakland, Calif, to be and appear before the Committee on Un-American Activities, or a duly authorized subcommittee thereof, of the House of Representatives of the United States, of which the Hon. Harold H. Velde is chairman, in their chamber in the city of San Francisco, Calif, on December 1, 1953, at the hour of 10:00 a.m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Exhibit A—(Continued)

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 16th day of October, 1953.

HAROLD H. VELDE,  
Chairman.

Attest:

LYLE O. SNADER,  
Clerk.

The said subpoena was duly served as appears by the return made thereon by L. K. Holmes, 5270-E, Oakland Police Department, who was duly authorized to serve the said subpoena. The return of the service by the said L. K. Holmes, being endorsed thereon, is set forth in words and figures, as follows:

Subpena for Ole Fagerhaugh, before the Committee on Un-American Activities, on December 1, 1953. Served 28 Oct. 53—0950. L. K. Holmes, 5270-E, O. P. D.

On November 20, 1953, a telegram was sent to Ole Fagerhaugh by Hon. Harold H. Velde, chairman of the Committee on Un-American Activities, which is set forth in words and figures as follows:

MIN NL GOVT

CHG B25.

Night Letter

November 20, 1953.

Upon continuing authority of the subpoena served upon you your appearance before the Committee on Un-American Activities is hereby postponed from December 1, 1953, to



## Exhibit A—(Continued)

December 3, 1953, 9:30 a.m., Board of Supervisors Room, City Hall, Civic Center, San Francisco, California.

HAROLD H. VELDE,  
Chairman.

On December 3, 1953, at the conclusion of the day's hearings, the chairman of the committee announced that all witnesses not heard on December 3 were to report in the hearing room promptly at 9:30 a.m., December 4, 1953.

The said Ole Fagerhaugh, pursuant to said subpoena and in compliance therewith, appeared before the said committee on December 4, 1953, to give such testimony as required under and by virtue of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress. The said Ole Fagerhaugh, having appeared as a witness and having been asked the question, namely:

Where are you presently employed?

which question was pertinent to the subject under inquiry, refused to answer such question; and as a result of Ole Fagerhaugh's refusal to answer the aforesaid question, your committee was prevented from receiving testimony and information concerning a matter committed to said committee in accordance with the terms of the subpoena served upon the said Ole Fagerhaugh.

Exhibit A—(Continued)

The record of the proceedings before the committee on December 4, 1953, during which Ole Fagerhaugh refused to answer the aforesaid question pertinent to the subject under inquiry is set forth in fact as follows:

Friday, December 4, 1953

United States House of Representatives,  
Subcommittee of the Committee on Un-American  
Activities,

San Francisco, Calif.

Public Hearing

The subcommittee of the Committee on Un-American Activities met, pursuant to adjournment, at 9:30 a.m., in the hearing room of the board of supervisors, city hall, Hon. Harold H. Velde (chairman), presiding.

Committee members present: Representatives Harold H. Velde (chairman), Donald L. Jackson, Gordon H. Scherer, and Clyde Doyle.

\* \* \*

Mr. Velde: Let the record show that for the purposes of this hearing I have set up a subcommittee consisting of Mr. Donald Jackson, Mr. Gordon Scherer, Mr. Clyde Doyle, and myself, as chairman, for the purpose of this hearing.

\* \* \*

Mr. Kunzig: Mr. Fagerhaugh now has arrived.

## Exhibit A—(Continued)

Mr. Velde: In the testimony you are about to give before this subcommittee, do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Fagerhaugh: I do.

Testimony of Ole Fagerhaugh, Accompanied by  
His Counsel, Robert E. Treuhaft

Mr. Kunzig: What is your present employment, sir?

Mr. Fagerhaugh: I am a warehouseman.

Mr. Kunzig: Where are you employed?

\* \* \*

Mr. Velde: Will you answer the question, please? What is your employment?

(At this point Mr. Fagerhaugh conferred with Mr. Treuhaft.)

\* \* \*

Mr. Velde: Now will you answer the question, Mr. Witness, or give your legal basis for refusing to answer the question?

Mr. Fagerhaugh: Well, I am trying to give my reasons, including my legal reasons for refusing to answer this question, and I would like to proceed to do that if the committee will permit.

Mr. Jackson: Your opinion of the committee is not a legal reason for refusing to answer the questions. As a matter of fact, the committee is not at all concerned with your opinion of it.



## Exhibit A—(Continued)

Mr. Scherer: I am going to object to counsel in this case again telling the witness what to say.

Mr. Treuhaft: I am going to object to the committee making inferences that are unjustified.

Mr. Velde: The counsel should know his rights to confer with his witness. This is not a court of law as counsel well knows.

Mr. Treuhaft: I am aware of that.

Mr. Velde: This is a committee of Congress trying to ascertain the true facts about subversion in this country, and I ask that the counsel for the witness please remember that fact and act in accordance with the rules of the committee.

Will the witness answer the question?

Mr. Fagerhaugh: Will you repeat the question, please?

Mr. Kunzig: I believe if I recall correctly that the question was, where are you presently employed?

Mr. Fagerhaugh: I am going to continue to stand on my right not to answer that question because, as I say, the committee is already fully aware of where I am employed, and I don't see any purpose——

Mr. Scherer: Frankly I don't know where you are employed; I have no idea where you are employed, and the record should show where you are employed. It is not on the record, Mr. Chairman.

Mr. Velde: Frankly, I don't know, either, and I don't know whether any member of the committee knows.

## Exhibit A—(Continued)

Mr. Fagerhaugh: I would rather the committee enter that fact into the record from their own records. I am not going to be a party to dragging my employer into this smear campaign.

Mr. Jackson: Does the committee know where the witness is employed?

Mr. Kunzig: Yes, sir. May I answer that in one minute? I should like first to request that the witness be directed to answer that question, and then I will ask another one about the address.

Mr. Velde: Certainly, the witness is directed to answer the question. Where are you employed?

(At this point, Mr. Fagerhaugh conferred with Mr. Treuhaft.)

Mr. Fagerhaugh: I am going to decline to answer that question on the grounds of my rights under the fifth amendment.

Mr. Kunzig: Let me put it this way, Mr. Fagerhaugh: Are you employed at the Illinois Glass Co., 601 36th Avenue, Oakland, so that the record will state correctly?

Mr. Fagerhaugh: Same answer.

Mr. Kunzig: You feel that to answer "Yes" or "No" to that question would incriminate you?

Mr. Fagerhaugh: I don't feel that that answer or any answer I might give here might incriminate me. I have committed no crime. I am guilty of no crime, and I have nothing to fear. Now, my rights under the Constitution state that I may decline to answer this question on the grounds that I am guar-

## Exhibit A—(Continued)

anted the right not to act as a witness against myself, and for further reasons——

Mr. Velde: In a criminal proceeding; is that not true? And you say you have committed no crime whatsoever. Then do you still feel that you are entitled to the protection of the fifth amendment, when you have committed no crime?

(At this point Mr. Fagerhaugh conferred with Mr. Treuhaft.)

Mr. Fagerhaugh: I want to make very clear my position on this because what is said here today may some day be used in a court of law, and so I want it clearly understood the reason—my reasons for claiming the right not to answer this question under the fifth amendment, and I would like to——

Mr. Velde: Proceed, Mr. Counsel.

Mr. Kunzig: Mr. Chairman, the witness has refused to answer on the grounds of the fifth amendment and has said under oath he has not committed any crime. I should like therefore to ask him this question, whether you have ever been a——

Mr. Treuhaft: Just a moment, counsel. The answer has not been finished and you have interfered and interrupted.

Mr. Velde: Counsel knows his right to advise with his client; it is limited to that.

Mr. Treuhaft: I want to consult with my client.

(At this point, Mr. Fagerhaugh conferred with Mr. Treuhaft.)

## Exhibit A—(Continued)

Mr. Velde: Give the counsel an opportunity to talk with the witness.

Mr. Kunzig: Mr. Chairman, may I continue with the questioning?

Mr. Fagerhaugh: I would like to continue——

Mr. Kunzig: There is no question before the witness.

Mr. Velde: There is no question before the witness.

Mr. Fagerhaugh: I have not finished answering my reasons.

Mr. Velde: You have been given permission and opportunity to confer with your counsel. No question is pending.

Mr. Fagerhaugh: I still didn't finish the question that was asked.

Mr. Kunzig: For the record, to make it clear, the previous question the witness declined to answer on the grounds of the fifth amendment. Now I ask this question, Mr. Fagerhaugh: Have you ever been a member of the Communist Party——

(At this point Mr. Fagerhaugh conferred with Mr. Treuhaft.)

Mr. Kunzig (Continuing): Political Affairs Committee of Alameda County?

Mr. Fagerhaugh: I am not going to answer any further questions until I have been given an opportunity for the record to give a complete answer to the last question that was asked of me.

Mr. Velde: Well, will you give a complete an-



## Exhibit A—(Continued)

swer, or will you refuse to answer as you have done before?

Mr. Fagerhaugh: I want to give my reasons for declining to answer.

Mr. Velde: You may give your reasons, your explanation, if you will answer the question, but certainly not if you refuse to answer the question.

Mr. Fagerhaugh: I think it should be made very clear my reasons for refusing to answer this question because the committee seems to raise the question, well what have I to fear to answer a question like where do I work. Well, for the sake of the record, I want my reasons, I want to give my reasons for declining to answer under the fifth amendment because this case may come into a court of law, and I want it clearly understood what my reasons are. Now, I would like——

Mr. Velde: You say you have committed no crime. Then how can you sit there and claim the privileges against self-incrimination?

Mr. Fagerhaugh: Because the fifth amendment was drawn up to protect the innocent as well as the guilty, as you well know, and Chief Justice Rutledge has said, and if I may quote him——

Mr. Velde: The committee is well aware of the——

Mr. Fagerhaugh: I am not so certain the committee is well aware, and for the record, I would like to give a brief quote.

Mr. Jackson: In regular order, Mr. Chairman,

## Exhibit A—(Continued)

let us have the questions and get the declinations or the answers.

Mr. Velde: If the witness continues to make voluntary statements not in answer to the question that counsel asks and the members of this committee ask, I assure you that you will be removed from the hearing room.

Proceed, Mr. Counsel.

Mr. Kunzig: The question now before the witness which he has been evading, Mr. Chairman, is: Have you ever been a member of the Political Affairs Committee of the Communist Party of Alameda County, a very simple question to answer.

(At this point, Mr. Fagerhaugh conferred with Mr. Treuhaft.)

Mr. Fagerhaugh: Pardon me, what was the question?

(Representative Donald L. Jackson left the hearing room at this point.)

Mr. Kunzig: Well, I just wonder how you can confer all that time without knowing the question, but I will repeat it for about the fourth time, Mr. Witness. Have you ever been a member of the Political Affairs Committee of the Communist Party of Alameda County, as was testified here yesterday by Mr. Blodgett?

Mr. Fagerhaugh: I decline to answer that question on the grounds of the fifth amendment.

## Exhibit A—(Continued)

Mr. Kunzig: Have you ever been a member of the Communist Party at any time whatsoever?

Mr. Fagerhaugh: I likewise decline to answer that question on the grounds of my rights under the fifth amendment.

Mr. Kunzig: Are you now a member of the Communist Party?

Mr. Fagerhaugh: I further decline to answer that question on the grounds of the fifth amendment.

Mr. Kunzig: No further questions, Mr. Chairman.

\* \* \*

Mr. Velde: \* \* \* Is there any reason why this witness should be further retained under subpoena?

Mr. Kunzig: No, sir.

Mr. Velde: The witness is dismissed, and the committee will be in recess for 10 minutes.

Because of the foregoing, the said Committee on Un-American Activities was deprived of answer to pertinent question propounded to said Ole Fagerhaugh relative to the subject matter which, under Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, the same committee was instructed to investigate, and the refusal of the witness to answer the question, namely:

Where are you presently employed?

which question was pertinent to the subject under inquiry, is a violation of the subpoena under which the witness had previously appeared, and his re-

## Exhibit A—(Continued)

fusal to answer the aforesaid question deprived your committee of necessary and pertinent testimony, and places the said witness in contempt of the House of Representatives of the United States.

## EXHIBIT B

H. Res. 539

In the House of Representatives, U. S.,

May 11, 1954.

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Ole Fagerhaugh to answer a question before the said Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the Northern District of California, to the end that the said Ole Fagerhaugh may be proceeded against in the manner and form provided by law.

Attest:

Clerk.



EXHIBIT C

“Mr. Jackson \* \* \*

“Ole Fagerhaugh was heard by a sub-committee in San Francisco and is the only one of the nine presently being considered who was not heard here in Washington.

“Mr. Fagerhaugh refused to answer any questions concerning his alleged Communist Party membership and activities, and refused specifically to answer the question, ‘Where are you employed?’ He stood on the fifth amendment in each instance. The committee felt that saying that he was employed at the Illinois Glass Co., Oakland, Calif., could not possibly incriminate him and, therefore, that he used the fifth amendment improperly. It was further considered by the committee that as a matter of proper identification of Mr. Fagerhaugh his place of employment was necessary and desirable.

“Mr. Keating: Mr. Speaker, will the gentleman yield?

“Mr. Jackson: I yield to the gentleman from New York.

“Mr. Keating: Is the only basis for the citation against Fagerhaugh his failure to answer the question as to where he was employed?

“Mr. Jackson: I believe that is the specific question which the committee considered to represent a misuse of the constitutional provision. \* \* \*

\* \* \*

“Mr. Keating: Referring again to Fagerhaugh who refused to answer the question: ‘Where are you presently employed?’ Would the gentleman just enlighten us a little further on the reason why the committee felt that that question was pertinent to the subject under inquiry?

“Mr. Jackson: Yes, there were two principal reasons why the committee felt that the matter of his place of employment was important. First of all, as a matter of proper identification. Secondly, one of the principal goals of the Communist Party, as has been developed in testimony, has been to place Communist Party members in certain areas of employment. We know, for instance, that during the war an effort was made in the Baltimore area to place white collar workers in heavy industry. That has been developed throughout the country, and in order to determine that pattern, if it exists, the committee has made a very strong effort to determine the place of employment of one who has been identified under oath as a member of the Communist Party.

“Mr. Keating: I think that is helpful and it is convincing as to why that is a pertinent question.

“Mr. Jackson: I thank the gentleman.”

(Source: Congressional Record — House — May 11, 1954, pp. 6030, 6031.)

[Endorsed]: Filed August 17, 1954.

[Title of District Court and Cause.]

### MOTION TO STRIKE

The United States of America moves this Honorable Court to strike the following exhibits filed herein in support of the Motion of the Defendant to Dismiss the Indictment:

Affidavit of Bertram Edises

Exhibit "A,"

Exhibit "B," and

Exhibit "C," all attached to said affidavit.

The ground for this Motion to Strike is that the documents referred to are not appropriate to be considered in connection with pre-trial motions under Rule 12(b) of the Rules of Criminal Procedure and are not a part of the record.

LLOYD H. BURKE,

United States Attorney,

By /s/ RICHARD C. NELSON,

Assistant. U. S. Attorney.

### NOTICE OF MOTION TO STRIKE

To the Defendant Ole Fagerhaugh and to His Attorneys, Messrs. Edises, Treuhaft, Grossman & Grogan, 1440 Broadway, Oakland 12, California:

Please Take Notice that, in accordance with the foregoing Motion to Strike, the United States will move the Court to strike the herein-described documents at the time of the hearing of Defendant's

Motion to Dismiss Indictment, at 9:30 a.m., September 14, 1954.

LLOYD H. BURKE,

United States Attorney,

By /s/ RICHARD C. NELSON,

Assistant U. S. Attorney.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE AND IN OPPOSITION TO MOTION TO DISMISS

The first six grounds listed as bases for dismissal of the indictment rest on factual allegations and evidentiary materials submitted by affidavit with the Motion to Dismiss. It is well settled that the Court may not go beyond the indictment itself in deciding a Motion to Dismiss, even if the extraneous matters are of the type which may be judicially noticed.

Local 36, Int. F. & A. W. v. United States,  
177 F. 2d 320 (9th Cir. 1949), cert. den.  
339 U.S. 947.

Clearly, if the allegations of the indictment are insufficient to charge a crime, the Government may not supplement the indictment by affidavits or evidence. Likewise, the documents submitted by the defendant are irrelevant to any question before the Court on a pretrial motion.

The records of congressional proceedings such as those filed herein as exhibits will not be judicially noticed prior to trial.

United States v. Emspak,  
95 F. Supp. 1010, at 1012 (D.D.C. 1951)

In the above case, a Motion to Strike documents containing similar evidentiary materials attached to a Motion to Dismiss was granted by the District Court for the District of Columbia.

United States v. Emspak,  
Cr. No. 1742-50, Jan. 19, 1951, aff'd 203 F.  
2d 54 (D.C. Cir. 1952), cert. granted 346  
U.S. 809.

The factual allegations in the indictment must be taken as true for the purposes of a Motion to Dismiss.

Pierce v. United States,  
252 U.S. 239, 244 (1920)

United States v. Chrysler Corp. Parts Wholesalers,  
180 F. 2d 557 (9th Cir. 1950)

For example, under ground 7(b) of his Motion, defendant alleges the question asked him was not pertinent. Pertinency is pleaded in the indictment and is admitted until placed in issue by a plea of "Not Guilty." Therefore that ground at this time is irrelevant as are grounds 1 through 6.

Grounds 7(a)(1) and (2) and 7(c) assert the indictment states no crime because the enabling statute and resolution are unconstitutional.

The validity of the House Committee on Un-American Activities has been the subject of exhaustive examination and certainly by now conclusive determination. It has been held not to



violate the first amendment, the fifth amendment, or any absolute right of privacy. "The committee was and is constitutionally created, \* \* \* it functions under valid statute and resolution which have repeatedly and without exception been upheld as constitutional \* \* \*'" (Lawson v. United States, *infra*.)  
See:

United States v. Josephson,  
165 F. 2d 82 (2d Cir. 1947), cert. den., 333  
U.S. 838 (1948).

Barsky v. United States,  
167 F. 2d 241 (C.A.D.C. 1947), cert. den.,  
334 U.S. 843 (1948).

Eisler v. United States,  
170 F. 2d 273 (C.A.D.C. 1948).

Dennis v. United States,  
171 F. 2d 986 (C.A.D.C. 1948), aff'd, 339  
U.S. 162 (1950).

Lawson v. United States and  
Trumbo v. United States,  
176 F. 2d 49 (D.C. Cir. 1949), cert. den.  
339 U.S. 934 (1949).

Respectfully submitted,

LLOYD H. BURKE,

United States Attorney;

By /s/ RICHARD C. NELSON,

Assistant U. S. Attorney.

Dated: September 7, 1954.

Affidavit of Mail attached.

[Endorsed]: Filed September 7, 1954.

[Title of District Court and Cause.]

### ORDER

In ruling on defendant's motion to dismiss, I will treat the seventh ground assigned separately.

(1) Grounds one through six:

Whether the defendant validly asserted the privilege against self-incrimination depends upon the setting and the circumstances in which the questions are propounded. The question is, as against the background of the law a question of fact. *U. S. v. Pechart*, 103 F. Supp. 417 (N.D. Calif. 1952). I believe this question can be better resolved at the trial.

The other grounds raised likewise depend upon all the facts and should likewise be decided at the trial.

(2) Ground seven:

The indictment is sufficient to allege an offense against the United States. *Lawson v. U. S.*, 176 F. 2d 49 (D.C. Cir. 1949), cert. den. 339 U.S. 934 (1950), reh. den. 339 U.S. 972 (1950).

Good Cause Appearing Therefor, it is ordered that defendant's motion to dismiss based on ground seven be and hereby is denied

The ruling on defendant's motion to dismiss based on grounds one through six is deferred for determination at the trial of the general issue.

Under the above order the government's motion to strike is moot and will therefore be denied.

Dated: September 17th, 1954.

/s/ EDWARD P. MURPHY,  
United States District Judge.

[Endorsed]: Filed September 17, 1954.

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United States District Court for the Northern  
District of California, Southern Division

No. 34153

UNITED STATES OF AMERICA,

vs.

OLE FAGERHAUGH.

### JUDGMENT AND COMMITMENT

On this 10th day of December, 1954, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of violation of Title 2 U.S.C., Sec. 192—Citation for Contempt of Congress. Refusal to answer pertinent question under inquiry before the subcommittee of the Committee on Un-American Activities of the House of Representatives of the United States, as charged in the indictment (single count); and the Court having asked the



defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Month and pay a fine to the United States of America in the sum of One Hundred Dollars (\$100).

Ordered that defendant be granted a stay of execution of judgment until December 17, 1954, at 10 o'clock a.m.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ O. D. HAMLIN,

United States District Judge.

Examined by:

/s/ RICHARD C. NELSON,

Assistant U. S. Attorney.

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

[Endorsed]: Filed December 14, 1954.

Entered December 15, 1954.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

1. Name and address of appellant: Ole Fagerhaugh, 2265 East 19th Street, Oakland, California.

2. Name and address of appellant's attorney: Edises, Treuhaft, Grossman and Grogan, Bertram Edises, Edward R. Grogan, 1440 Broadway, Oakland 12, California.

3. Offense: Violation of 2 U.S.C. 192 (Contempt of Congress).

4. Statement of judgment and sentence:

On December 10, 1954, appellant was adjudged guilty and sentenced to imprisonment for one month and a fine of \$100.00. Execution of sentence was stayed until December 17, 1954, with defendant continued at liberty on bail of \$500.00.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: December 17, 1954.

/s/ OLE FAGERHAUGH,  
Appellant.

EDISES, TREUHAFT,  
GROSSMAN AND GROGAN.

By /s/ BERTRAM EDISES,  
Attorneys for Appellant.

[Endorsed]: Filed December 17, 1954.

The United States District Court, Northern District  
of California, Southern Division

No. 34,153

Before: Hon. Oliver D. Hamlin, Judge.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLE FAGERHAUGH,

Defendant.

REPORTER'S TRANSCRIPT

October 14, 1954

Appearances:

For the Government:

LLOYD H. BURKE, U. S. Attorney, By  
RICHARD C. NELSON, ESQ.,  
Assistant U. S. Attorney.

For the Defendant:

EDISES, TREUHART, GROSSMAN  
and GROGAN, By  
BERTRAM EDISES, ESQ., and  
EDWARD R. GROGAN, ESQ.

The Clerk: United States versus Ole Fagerhaugh, for trial.

Will respective counsel please state their appearance for the record?

Mr. Nelson: Richard C. Nelson for the United States.

Mr. Edises: Bertram Edises and Edward R. Grogan for the defendant.

Mr. Nelson: May it please your Honor, I understand counsel for the defendant has an opening statement he wishes to make at this time.

#### Opening Statement on Behalf of the Defendant

Mr. Edises: May it please the Court, the defendant in this case is charged with an offense generally referred to as contempt of Congress arising out of his refusal, upon advise of counsel, to answer a question asked of him before a sub-committee of the House Committee on Un-American Activities last December in the city of San Francisco. That question was, "Where are you employed?"

I wish at this time formally to state that the defendant, Mr. Fagerhaugh, now wishes to answer the question. He is prepared, ready and willing to answer that question, either before this Court or before the sub-committee in any manner which may be appropriate. In other words, he now offers, through his counsel, to purge the alleged—to purge himself of the alleged contempt. [2\*]

Mr. Nelson: May it please the Court, in order that the record may be clear, I would like to state

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

the Government's opposition to this offer. We believe that the offer comes too late, and that only if the defendant had previously purged himself and done so before the committee which cited him for contempt could that be an appropriate presentation.

We further believe, your Honor, that it would be a very deleterious principle of law if the Congressional committees were required to obtain an answer to their questions at times and places convenient to the witnesses.

I understand your Honor desires to have authorities submitted on this point, and we will prepare a brief for your Honor on it.

The Court: Counsel has indicated in chambers prior to my coming on the bench that such an offer would be made, and has been informally discussed in chambers. Counsel on either side have been unable to offer any authorities to the Court at this time, either for or against the position taken by either counsel, and it is my feeling that this offer should be taken under advisement and that counsel should have an opportunity, upon either side, to present authorities to the Court as to whether such an offer is proper at this time in this form, so that offer will be taken under advisement and a convenient time will be allowed counsel to present authorities.

Mr. Edises: Could I simply supplement my statement to [3] this extent, your Honor, that I called Mr. Lloyd Burke, the United States Attorney in this district, on Monday, and made that offer to him. His reply at that time was inconclusive, but



tended to be negative. I gather that has now been confirmed by the United States Attorney.

I would also like the record to show that the same day I attempted to communicate by long distance telephone with Chairman Velde of the committee, both at his office in Washington and at his home in Pekin, Illinois, for the purpose of making the same offer to answer that question, but I was unable to reach the Congressman on any of those occasions.

Mr. Nelson: May the record reflect, your Honor, that the Monday to which counsel refers was Monday, October 11.

The Court: All right, proceed.

#### Opening Statement on Behalf of the Government

Mr. Nelson: May it please your Honor, the Government intends to prove in this case that a duly created and authorized sub-committee of the Committee on Un-American Activities of the United States House of Representatives held hearings in San Francisco, on Friday, December 4, 1953; that pursuant to the authority of that committee and of the House of Representatives, the defendant was summoned to appear, and did appear; that he was asked a question which was pertinent to the subject then under inquiry by that sub-committee, and that he refused to [4] answer that question, and that his refusal was willful, within the meaning of that term as the law has applied it to this type of case.

First of all, your Honor, does defendant wish to make an opening statement?

Mr. Edises: No.

Mr. Nelson: First of all, your Honor, the Government will offer certain documentary exhibits.

At this time, your Honor, the Government offers as Exhibit 1 a copy of the rules of the House of Representatives, which is certified by the Clerk thereof, drawing your attention to pages 24 and 25 which deal with the creation and powers of the Committee on Un-American Activities.

I would further state, your Honor, that this same material verbatim has been enacted into law of which your Honor could have taken judicial notice, Public Law 601 of the 79th Congress, which may be found at 60 Statute 828. I will ask that the exhibit be limited only to pages 24 and 25 as they deal with the Committee on Un-American Activities, and to the certification which appears on the last page.

The Court: You said Public Law 601 of the 79th Congress?

Mr. Nelson: That is correct, your Honor. If you wish the rest of that citation I can give it to you.

The Court: Section 121?

Mr. Nelson: Yes. [5]

The Court: All right, may be admitted and marked Government's Exhibit 1.

(Whereupon section of Rules of House of Representatives referred to above was received in evidence and marked Government's Exhibit No. 1.)

Mr. Nelson: The Government will now offer as Exhibit 2 in evidence a certification by the Clerk of the House of Representatives giving the name of the

Speaker of the House and of the Clerk of the House of the 83rd Congress. This merely is for the purpose, your Honor, of verifying further documents.

The Court: May be marked Exhibit 2.

(Whereupon resolution dated January 3, 1953, referred to above was received in evidence and marked Government's Exhibit No. 2.)

Mr. Nelson: The Government will offer as Exhibit 3, your Honor, a certified statement signed by the Clerk of the House of Representatives, giving the membership of the Committee on Un-American Activities, House of Representatives of this Congress, 83rd.

The Court: Exhibit 3.

(Whereupon certified statement referred to above was received in evidence and marked Government's Exhibit No. 3.)

Mr. Nelson: The Government will offer as Exhibit 4, your Honor, a certified copy of report No. 1584, which previously [6] may appear in your Honor's file as part of the affidavit of Mr. Edises in connection with pre-trial motion.

Mr. Edises: May it please the Court, in this connection I want the record to indicate a reservation on the part of the defendant as to whether or not the testimony which is set forth in this proffered exhibit—may I see it—is a full, true and accurate transcript of the proceedings which took place before the Un-American Activities Committee.

Mr. Nelson: We will stipulate, your Honor, it is

not a complete transcript. It is offered merely for the purpose of showing to your Honor that a report was made by the Chairman of the Committee to the House of Representatives showing, your Honor, what was in that report.

Mr. Edises: In other words, counsel, if I understand you correctly, you are offering this to show the record upon which the House of Representatives proceeded in citing Mr. Fagerhaugh, is that correct?

Mr. Nelson: That is not correct. I am offering it simply to show the existence of a report and that a report was made by the chairman to the House of Representatives. I don't make any pretension of saying that is the entire record upon which the contempt citation was voted.

The Court: May be marked Exhibit 4.

(Whereupon report No. 1584, referred to above, was received in evidence and marked Government's [7] Exhibit No. 4.)

Mr. Nelson: I offer to your Honor as Exhibit 5 the resolution of the House of Representatives dated May 11, 1954, directing the Speaker of the House of Representatives to certify the report to the United States Attorney, the report which your Honor has, the preceding exhibit.

The Court: Exhibit 5.

(Whereupon resolution of May 11, 1954, referred to above, was received in evidence and marked Government's Exhibit No. 5.)

Mr. Nelson: I will offer as Government's Ex-



hibit 6, your Honor, the certification by the Speaker of the House of Representatives to the United States Attorney for this district of the refusal of the defendant to answer a question.

The Court: Exhibit 6.

(Whereupon certification by the Speaker, referred to above, was received in evidence and marked Government's Exhibit No. 6.)

Mr. Nelson: I will offer at this time, your Honor, as Government's Exhibit next in order a certified copy of the transcript of the proceedings in the hearings of the sub-committee of the Committee on Un-American Activities held in San Francisco, on December 1, 1953. This is entitled "Part I," and it is offered, your Honor, merely for the statement of Chairman Velde contained on pages 3055 and 3056. [8]

The Court: Exhibit 7.

(Whereupon copy of transcript, "Part I," referred to above, was received in evidence and marked Government's Exhibit No. 7.)

Mr. Nelson: I will offer, your Honor, as Government's Exhibit next in order a certified copy of the transcript of the hearing held by the sub-committee of the Committee on Un-American Activities in San Francisco on December 4, 1953, which is marked "Part IV."

I offer that, your Honor, as the complete transcript of the testimony given by the defendant on



December 4, 1953, and I limit the exhibit to pages 3367 through 3371.

Mr. Edises: We would have an objection to the offer, your Honor, on the ground that there is no adequate foundation laid to show that the testimony is in fact the full, true and complete transcript of the testimony of Mr. Fagerhaugh; and furthermore, that it would not be the best evidence of that testimony. It is our belief that the proper way to prove the very crucial question of what actually was said at that time is by producing the court reporter and having him identify his official transcript for the record.

Mr. Nelson: May it please your Honor, under the rules of Criminal Procedure, of course, an official record is admissible. I would simply ask, your Honor, then to admit it for such evidentiary value it may have on the subject. If [9] better evidence is produced to show that this transcript is incorrect in any way by the defendant, of course your Honor is free to accept that evidence.

Mr. Edises: Well, your Honor—

The Court: How is it authenticated? May I see it?

Mr. Edises: May I say, your Honor, that there is no question that that is an official volume of the Committee, but that's not the issue. The issue is what was the testimony of Mr. Fagerhaugh? The version offered in and of itself shows that certain portions of Mr. Fagerhaugh's testimony were stricken.

I might call your attention, for example, to page

3368. It is just about the fifth line where there appears this statement. First there is a question by Mr. Kunzig;

“Where are you employed?”

And that is followed by this statement:

“Upon order of the Chairman, certain remarks of the witness were ordered stricken at this point.”

Now, we have no way of knowing what those remarks were. Perhaps they were in answer to the question; there is no way of telling as far as this report is concerned.

So we renew our objection on the ground no proper foundation has been laid and that they are not the best evidence on this crucial question.

Mr. Nelson: Well, your Honor, as far as the foundation [10] goes I will refer your Honor to Rule 7 of the Rules of Criminal Procedure which provide that an official record or entry therein or lack of such record or entry may be proved in the same manner as in civil actions, and I then ask your Honor to look to Rule 44 of the Rules of Civil Procedure which provide that an official record or entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody.

I further direct your Honor's attention to two sections of Title 28, rather, one section of 28, Section 1733——

The Court: What is that?

Mr. Nelson: Section 1733 of Title 28, United States Code, which further deals with the proof of government records and papers.

The Court: 1733?

Mr. Nelson: That's correct, your Honor. "Books or records of account, or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept."

I might say, your Honor, we will have testimony from a witness who was present at the hearing who will go over the transcript, but we do offer, your Honor, as evidence of exactly what was said at that time.

Mr. Edises: Do I understand counsel to be stating that [11] the court reporter will be produced to testify to the actual testimony?

Mr. Nelson: No, you do not.

The Court: Where is the court reporter?

Mr. Nelson: Where is the court reporter? I have no idea, your Honor. It has never been the practice in proceedings of this type to produce the court reporter, or his notes, where there was an official printed transcript—that is, of Committee hearings.

The Court: I don't know whether counsel's objection is good or not. I will take the matter under advisement, but if the court reporter is available I would think he would be—I don't know that the reporter is carried around by the Committee or whether they get the reporters in the locality in which the Committee hearing is held.

Mr. Nelson: It varies with the situation, your Honor; sometimes they do.

The Court: You might make some effort to find out if there is such a court report available.

Mr. Nelson: Very well, your Honor.

The Court: I will mark the last exhibit, Exhibit 8 for identification at this time. I will admit it in evidence subject to a motion to strike, so that we may have a record here.

(Whereupon copy of transcript, "Part IV," referred to above, was marked Government's Exhibit [12] No. 8 for identification.)

Mr. Nelson: I believe under the rules cited to your Honor it is admissible. Objections of the type made by counsel for the defendant go to its weight only.

The Court: All right.

Mr. Edises: May I inquire of counsel, through the Court, whether he intends to offer the rest of the volumes of the Committee's proceedings in San Francisco? You have offered, I believe, Volumes I and IV. Presumably on the same theory of relevancy for which you offered these, the others should likewise be presented to the Court as part of the general settings, which the cases indicate is pertinent to a proceeding of this kind.

Mr. Nelson: I think, your Honor, his point may well be taken, with regard to the defense of the privilege against self-incrimination, the setting is important. However, I would say that that is part of the defendant's case, and if he wishes to introduce those volumes in evidence as part of his



case, we will have no objections to Volumes II, III and V.

The Court: Do you have them?

Mr. Nelson: No, I do not.

Mr. Edises: Simply in the interests of an orderly record I think they all ought to go in at this time, since they are part of a similar pattern.

The Court: Do you have them, counsel? [13]

Mr. Edises: I have Volume III. I don't, apparently, have them with me, but I believe I can obtain them. May I ask that——

The Court: If you produce them, counsel, you may offer them and we will mark them.

Mr. Edises: I suggest that appropriate numbers be reserved now so that they will occupy substantially the same place in the record.

Mr. Nelson: I submit, your Honor, they are part of the defendant's case, not the Government's,

The Court: I will permit you to offer them, Mr. Edises; they will be given appropriate markings.

Mr. Nelson: The Government calls Mr. William A. Wheeler.

#### WILLIAM A. WHEELER

called as a witness on behalf of the Government, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Court: State your name, please.

The Witness: William A. Wheeler.



(Testimony of William A. Wheeler.)

Direct Examination

By Mr. Nelson:

Q. What is your address, Mr. Wheeler?

A. 325 West Brookdale Place, Fullerton, California.

Q. What is your occupation?

A. I am an investigator for the House Committee on [14] Un-American Activities.

Q. Where are you stationed, Mr. Wheeler?

A. Stationed in Los Angeles.

Q. Will you describe very briefly to the Court your previous government service?

A. 1942 I was employed as Deputy United States Marshal in Los Angeles, California; remained there for a year. Then I became an agent for the United States Secret Service for a period of 18 months. I then enlisted in the United States Army, and my principal assignment there was—I was assigned to the Criminal Investigation Division, and my army career lasted for two years.

Subsequent to that I was restored as an agent of the United States Secret Service for approximately a year.

I resigned from the Treasury Department and accepted this position in 1947, and I have been investigator for the Committee since that time.

Q. Can you state very briefly your duties, Mr. Wheeler?

A. Well, practically the same as any investigator. I receive assignments from the Committee and in-

(Testimony of William A. Wheeler.)

investigate the areas that they desire to be investigated, submit reports.

Q. Have your investigations included the San Francisco area?      A. Yes, sir.

Q. Do you know the defendant in this case, Mr. Ole Fagerhaugh?

A. I recognize him as being present. [15]

Q. Do you recall when you first saw him?

A. It was the day he appeared before the Committee. That would be the 4th day of December, 1953.

Q. Do you know whether or not a subpoena was issued for this gentleman?      A. It was, sir.

Q. Do you know what return was made on that subpoena?

A. Yes, sir. As I recall, the subpoena was issued on the 16th day of November, 1953, and it was given to the Chief of Police at Oakland, Lester J. Devine. An officer of the Oakland Police Department served the subpoena.

Q. Do you know whether or not a return showing service was made on that day?

A. Yes, I have that subpoena with me, the return.

Q. What was the date on which Mr. Fagerhaugh was in fact called to testify before the sub-committee?

A. He was called to testify on December 3. A telegram had previously been sent to him advising him to appear on the 3rd.

(Testimony of William A. Wheeler.)

Q. What day was he actually called to make his testimony?

A. He was called to testify on the 4th of December.

Q. And was it this gentleman who responded at that time?

A. The gentleman in the middle, yes.

Q. Where were those hearings being held, Mr. Wheeler?

A. In the Board of Supervisors' room in the City Hall in the City of San Francisco. [16]

Q. Was that a Committee hearing or a sub-committee hearing?

A. A sub-committee hearing.

Q. How do you know that?

A. Well, there were four members of the Committee, and Chairman Velde at the beginning of the hearing on December 1 set up a sub-committee constituting of himself as chairman, and three other members.

Q. Do you know whether or not he again set up a sub-committee on December 4?

A. I have no independent recollection.

Q. Would the transcript of that day's hearing reflect it if he did so?

A. Yes, it would.

Q. How many members were there on that sub-committee on December 4?

A. There were four.

Q. How many of those four members were present on December 4, 1953, when the defendant took the stand?

(Testimony of William A. Wheeler.)

A. I have no independent recollection. However, I do know that a quorum was present.

Mr. Edises: Object to it, calling for the witness' conclusion. Ask the portion dealing with that conclusion go out.

The Court: It may go out.

Q. (By Mr. Nelson): Have you reviewed the transcript of that [17] day's proceeding, Mr. Wheeler? A. Yes, I have.

Q. How many members of the sub-committee does the transcript reflect were present when the defendant took the stand? A. Four.

Q. Were all four of those members of the sub-committee present throughout the defendant's testimony?

A. No, sir, after I reviewed the testimony, Congressman Jackson, Donald, left the hearing room for a short period of time.

Q. Were the other three members of the sub-committee present throughout the defendant's testimony? A. They were.

Q. Was the defendant sworn before he took the stand? A. He was.

Q. What subject, generally, was the Committee investigating at the time of the hearings which were held in San Francisco?

Mr. Edises: Objected to on the ground no proper foundation has been laid.

The Court: I am inclined to think the objection is good. Does the transcript show what was said at the time?



(Testimony of William A. Wheeler.)

Mr. Edises: Well, your Honor, I am not suggesting that counsel must limit it necessarily to that, but I think he must qualify this witness and show the basis of his knowledge.

Q. (By Mr. Nelson): Do you know what the subject was, [18] generally, that was being investigated by the subcommittee on December 1, 2, 3, 4 and 5 of 1953, Mr. Wheeler?

A. Well, yes, sir.

Mr. Edises: Just a moment.

Q. (By Mr. Nelson): How do you know what that subject was, Mr. Wheeler?

A. I was assigned by the Committee approximately—or given an assignment to investigate the Bay Area in regard to the nature, the extent and objects of the Communist Party in this area. Now, this assignment I received approximately six months prior to the hearings, and the investigation took place approximately six months before the hearings began.

Q. Do you know if Chairman Velde of this Committee and of the subcommittee made a statement for the record of the purposes of the hearings which were held in San Francisco?

A. That is true, at the beginning of the hearings on December 1.

Q. On December 1?                      A. Yes, sir.

Q. You were present on that day, were you?

A. I was.

Q. Did you hear that statement?                      A. I did.

Q. Did his statement of the purposes of the



(Testimony of William A. Wheeler.)

hearings in any way differ from the statement you have just given? [19]

A. Not that I know of.

Mr. Edises: May I have just a moment? May that go out, your Honor, as a conclusion of the witness?

The Court: That may remain in.

Mr. Edises: May I have Exhibit——

The Court: The exhibits are here.

Q. (By Mr. Nelson): Mr. Wheeler, I will show you Government's Exhibit 7 in evidence which purports to be the transcript of the hearings held on the first day of December, 1953. I will ask you to state for the Court on what pages may be found Mr. Velde's statement of the purposes of the hearings which were held.

A. The statement begins on page 3055, concludes on the bottom of page 3056.

Q. I will ask you, Mr. Wheeler, what significance the place of employment of witnesses called to testify before the Committee, or a subcommittee, had?

Mr. Edises: Objected to as calling for the opinion and conclusion of the witness, no proper foundation, no adequate showing of his qualifications to answer that, and furthermore, he is being asked to testify to what the Committee's objectives were in this regard without any showing of how, where or under what circumstances he learned such objective.

(Testimony of William A. Wheeler.)

Mr. Nelson: Well, your Honor, he has testified he was the investigator—— [20]

The Court: I am inclined to think the objection is good. Sustained.

Q. (By Mr. Nelson): Did you have any connection, Mr. Wheeler, with preparing questions which were asked of the various witnesses who testified at these hearings? A. Yes, sir.

Q. How did you know what to direct your questions to, what subjects?

A. Well, principally the subjects under investigation. I conducted the investigation prior to the hearings of the Committee and prior to the arrival of counsel, and I based these questions on the knowledge I obtained during the investigation.

Q. Had you ever been informed by any Committee member, or any Committee member's staff, along what lines to investigate, to make your investigation?

A. Well, as I previously stated, I was given an assignment to learn or attempt to develop a hearing which would disclose the extent, the nature and the objects of the Communist Party in the Bay Area.

Q. Now, I notice that at least one witness, to wit, Mr. Fagerhaugh, in the transcript, which is in evidence, was asked: "Where are you employed?" Will you state what significance that question had?

Mr. Edises: May it please the Court, I think the question is again objectionable on the same ground. This man is a [21] private investigator on the

(Testimony of William A. Wheeler.)

public payroll and there is no showing that there was any communication from him—from the Committee, rather, to him, which would qualify him to answer this particular question. If he is to be asked this question, at the very least there should be a showing of the time and place and circumstances under which the Committee communicated its views with respect to this question to the witness. There has been no such showing.

The Court: I think you might develop whether this witness has any knowledge or fact that would permit him to answer the last question.

Q. (By Mr. Nelson): I think you testified you had been an investigator for the Committee since 1947, is that correct? A. That is right.

Q. I wonder if you can estimate how many hearings similar to the hearings held in San Francisco in December, 1953, you have participated in?

A. Well, I have participated in one hundred hearings—this is geographical hearings, taken in a whole area—I would imagine of this particular type, maybe seven or eight. It would be hard.

Q. Seven or eight geographical hearings, is that correct? A. That is true.

Q. And perhaps one hundred hearings of the Committee?

A. Yes. I mean by hearing, lasting half a day, one day, or [22] similar to that, short period of time.

Q. Have you had a hand in preparing the questions asked witnesses in other hearings besides this

(Testimony of William A. Wheeler.)

one? A. That is true.

Mr. Nelson: Your Honor consider that as sufficient foundation?

The Court: No, not quite, counsel. I would like the knowledge of this witness himself as to what knowledge he has of the subject of this inquiry.

Mr. Edises: May I be permitted to make this observation, your Honor, that in addition we would like to know, as part of the foundation, something about the particular question which is at issue here. It is very interesting to hear about his broad experience in other inquiries, but the defendant here is not on trial for anything that happened in any of those other inquiries.

The Court: I take it the background experience has been established here, but I would like to know what knowledge he has, counsel, of this subject of the inquiry.

Mr. Nelson: Of the general subject of the inquiry, your Honor?

The Court: You say he is an investigator. That doesn't mean he has any knowledge.

Q. (By Mr. Nelson): What were your directions along the lines which your investigation should be conducted? How were they [23] transmitted to you, Mr. Wheeler?

A. It may have been by correspondence or it may have been by telephone.

Mr. Edises: I shall move that go out as not responsive and not an indication of any personal knowledge on the part of the witness.



(Testimony of William A. Wheeler.)

The Court: Well, I think that goes to the weight of it, counsel. It may remain.

Q. (By Mr. Nelson): You simply don't recall which at the present time?

A. I do not recall which at the present time.

Q. Do you recall from whom the directions came?

A. It would come from the Chief Investigator of the Committee.

Q. At that time who was he?

A. Louis J. Russell.

Q. What were your directions as to the subject along which you were to conduct your investigation?

A. I was instructed to proceed to San Francisco and conduct an investigation to determine if the Communist Party had enough strength here, had infiltrated in any of the basic industries or defense industries; then submit a report with a recommendation whether or not a hearing should be held in this area.

Q. Did you subsequently submit such a report?

A. That is true. [24]

Q. When the hearing was arranged and Committee counsel appeared here, you worked with them, did you not, in preparing questions for the witnesses? A. I did.

Q. Can you now tell the Court what significance that question, the question "Are you employed?" had to the Committee at this time?

Mr. Edises: May it please the Court, I don't think that he has supplied the foundation.



(Testimony of William A. Wheeler.)

The Court: Well, I think it could be developed more, counsel. Possibly I haven't made myself clear. The exhibit that I have in my hand, type-written record, is headed "Investigation of Communist Activities in the San Francisco Area."

The Witness: Yes, sir.

The Court: Did you make such an investigation?

The Witness: I did, sir.

The Court: Did you receive any information concerning such activity?

The Witness: I did, sir.

The Court: Did you at that time know whether or not there were any activities in the San Francisco area?

The Witness: Yes, sir.

The Court: In the course of your investigation did you ascertain whether or not certain individuals alleged to be taking part in those activities were engaged in industry in [25] the Bay Area?

The Witness: Yes, sir.

The Court: Was that a part of your investigation to determine whether or not they were engaged in industry in the Bay Area?

The Witness: It was, sir.

Q. (By Mr. Nelson): Do you know, Mr. Wheeler, what the primary purpose of asking the question "Where were you employed?" was in this instance? A. Yes, sir.

Q. What was it?

Mr. Edises: Now, just a moment. Again I don't believe that is the proper way. I think I know what

(Testimony of William A. Wheeler.)

counsel is trying to get at; I don't think the proper way is by asking this witness to state the purpose of the inquiry which necessarily can be indicated only by the source from which policy-making emanated. This witness has not shown to have been in any policy-making capacity, nor is it—nor has it been demonstrated there was any communication or instructions to him from anyone in a policy-making capacity in the Committee. Therefore, I submit he is not qualified to answer that question.

Mr. Nelson: Your Honor, he arranged the investigation; he had a hand in drawing the questions. How could anyone have a better knowledge of what the questions meant to the subcommittee? [26]

The Court: I think the record itself will have to show what it meant to the Committee, counsel, within evidentiary limits. But I have asked certain questions, you asked certain questions going along that line.

Were you instructed by the Committee or by any member of the Committee to ascertain whether or not there were any Communistic activities in industry in the Bay Area?

The Witness: That is true; yes, sir.

The Court: In doing that did you ascertain the places of employment—

The Witness: That was part—

The Court: —of various persons alleged to be engaged in those activities?

The Witness: That was part of the assignment and part of the investigation, yes.

(Testimony of William A. Wheeler.)

Q. (By Mr. Nelson): Mr. Wheeler, did your subpoenas sometimes carry the addresses, the business addresses of witnesses?

A. They do, sir, yes.

Q. It is possible, is it not, that when a witness appearing in a hearing—his address might have changed from the address which is on the subpoena?

A. It is.

Q. It is possible, is it not——

Mr. Edises: Just a moment. I am going to object and ask that question and answer be stricken on the ground it is [27] leading and suggestive.

The Court: It is leading and suggestive, counsel. It may be stricken.

Q. (By Mr. Nelson): Do you know whether or not addresses of witnesses testifying before the Committee are ever different from the addresses which appear on subpoenas?

Mr. Edises: Objected to as leading and suggestive.

The Court: It may be answered yes or no.

The Witness: Repeat the question.

Q. (By Mr. Nelson): Do you know whether the address of witnesses testifying before the Committee are ever different from the addresses which have appeared on the subpoenas issued to them by the Committee?

A. Well, there have been typographical errors. A person could move during the period of time the subpoena was issued and the period of time he testified.

(Testimony of William A. Wheeler.)

Mr. Edises: I ask the answer go out, your Honor, as not responsive, and as a volunteered statement of the witness.

The Court: It may remain.

Q. (By Mr. Nelson): To your knowledge in any Congressional hearing has a person with an identical name been called and found to be not the person who the Congressional Committee desired to have testify?

Mr. Edises: Objected to as irrelevant, remote and immaterial, calling for speculation, as well as conclusion on [28] the part of the witness.

Mr. Nelson: Have to show why that question was asked, your Honor? It is very relevant.

The Court: I will permit the answer.

A. I can't recall that instance happening before our Committee.

Q. (By Mr. Nelson): Ever recall it happening before any Committee?

Mr. Edises: Objected to as remote.

The Court: Sustained.

Q. (By Mr. Nelson): Generally speaking, Mr. Wheeler, on what subjects was the defendant to be questioned by the Committee, if you know?

A. He was to be questioned regarding his alleged membership in the Communist Party, his knowledge of the Communist movement in the Bay Area.

Mr. Nelson: You may cross-examine.



(Testimony of William A. Wheeler.)

Cross-Examination

By Mr. Edises:

Q. May I see the subpoena to which you referred?

A. Yes, sir. (Witness handing paper to counsel.)

Mr. Edises: I would like to offer the subpoena in evidence, may it please the Court.

The Court: It may be marked Defendant's Exhibit A. [29]

(Whereupon the subpoena dated October 16, 1953, referred to above, was received in evidence and marked Defendant's Exhibit A.)

Mr. Nelson: May I see that, counsel?

Q. (By Mr. Edises): Mr. Wheeler, you referred to a report which you say you submitted to the Committee members the results of your investigation into Communist activities in the San Francisco Bay Area; do you have that report?

A. It is a report, could be either verbal or written. I wouldn't know at this time.

Q. What was it? A. I don't know.

Q. When did you make such a report?

A. I would have to give an approximate date. I would say around October, 1953, recommending that a hearing be held.

Q. Where did you make the report?

A. I would make it to the Chief Investigator, at that time Louis J. Russell.



(Testimony of William A. Wheeler.)

Mr. Edises: I ask the answer be stricken as not responsive.

The Court: Did you make it to Russell?

The Witness: Yes.

Q. (By Mr. Edises): Where did you make it?

A. Well, it was either written at my residence at Fullerton and mailed to him, or made it over the telephone by long [30] distance.

Mr. Edises: I ask the answer be stricken as not responsive and the witness instructed to answer responsively.

The Court: I think the answer is responsive, counsel.

Q. (By Mr. Edises): Now, Mr. Wheeler, as I understand your testimony, you were instructed by the Committee to investigate Communist activity in the San Francisco Bay Area, with particular reference to industry, is that right?

A. The Committee—it is a foremost interest of the Committee to investigate defense industry, yes.

Q. So that the answer is yes?

A. It would be, yes.

Q. Yes. And I would like to ask you to particularize on that. What aspects of Communist activity in defense or other industry in the San Francisco Bay Area were you instructed to investigate? A. There was no specific instruction.

Q. You mean all that you had was a roving authority without any guidance from the Committee at all as to what you were to do, is that right?

A. Well, I wouldn't word it that way.

(Testimony of William A. Wheeler.)

Q. Well, how would you word it?

A. I would say that I was given authority to investigate Communist infiltration in the Bay Area, and it was a blanket authority. [31]

Q. Now, you speak of Communist infiltration in the Bay Area. What do you mean by that?

A. Infiltration in various industries.

Q. Well, define what you mean by "infiltration."

A. Well, infiltration is the penetration of a small group of people into any given organization or industry.

Q. Well, what was the interest of the Committee in this so-called Communist infiltration of industry?

A. To determine if it did exist.

Q. Now, what was the concern of the Committee with the existence of this so-called infiltration?

Mr. Nelson: Objection, your Honor. I don't understand the word "concern."

Mr. Edises: It is not a very long word.

The Court: No, but you understand the question?

The Witness: Yes, sir.

The Court: You may answer.

Q. (By Mr. Edises): Want to step down and explain it to counsel?

The Court: Counsel, let us not have any side remarks or any—

Mr. Edises: Withdraw the statement.

The Court: We are proceeding here in a serious matter and I want counsel on both sides to act that way.

(Testimony of William A. Wheeler.)

Mr. Edises: I regret the remark, your [32] Honor.

The Court: All right.

Mr. Edises: I will cease any effort at all to introduce any levity into the proceeding.

Q. Mr. Wheeler, I believe the Court has indicated that you may answer the question.

A. Would you repeat the question?

(Record read by the reporter.)

A. The Port of San Francisco is a very important city in the defense program of the United States. It has been said so repeatedly on the floor of the House by the members of the Committee, and also by the Armed Forces. If the Communist Party has infiltrated in this city it is very important that the Congress know it.

Q. Well, what was the—what did the Committee regard as the danger or the menace or the peril, or however you want to put it, of this so-called Communist infiltration into this important area?

Mr. Nelson: Objection, your Honor, unless he brings out whether or not he knew such things as the Committee's worry about danger and menace and so forth. My qualification of him didn't go that far.

The Court: I take it that the question as to his instructions from the Committee, that you may cross-examine as to his activities. What you now are asking him is what the belief of the Committee is as to certain matters of which he is only [33] the

(Testimony of William A. Wheeler.)

investigator, and I think that might be beyond the scope of the direct examination, counsel.

Mr. Edises: May it please the Court——

The Court: If he received any instructions to that effect, you may ask about those.

Mr. Edises: Very well.

Q. I understand that you were conducting your various activities under the direction of the House Un-American Activities Committee, is that right?

A. Yes, sir.

Q. And in the course of your services for them I presume that you had numerous consultations with the Committee and the authorized representatives of the Committee?

A. No, sir.

Q. You did not?

A. I did not. Over what period of time—I mean, you mean from the inception, when I started, or right prior to the hearing?

Q. Yes. In qualifying you, Mr. Wheeler, counsel went into your entire, your long period of employment by the Committee, and you used that as a basis for stating what the purpose of this inquiry was. You were asked that question, and I am trying to find out from you a little more about the purpose of the question, and therefore my present inquiry is how you gained your knowledge. Did you gain your knowledge of the purposes of [34] the inquiry by—well, put it this way:

How did you gain your knowledge of the purposes of these inquiries, and particularly the San Francisco inquiry?



(Testimony of William A. Wheeler.)

A. Well, as I stated, this investigation began approximately five or six months prior to the hearings. Now, during that course of time I had the opportunity to talk to numerous people—not numerous, but several people—that have been in the Communist Party. I took statements from these people under oath, I have taken—I have conducted hearings for the Committee myself.

Q. How did you know what questions to ask these people and what matters to inquire about?

A. I had been previously instructed by the Committee itself to ascertain the objects and nature and characteristics of the party here.

Q. All right, then, that is what I want to get at. I would like to have you give us in as much detail as you can what the Committee told you about the specific type of information or inquiry that they wanted you to pursue.

A. I have already stated it.

Q. Tell us again, then, and don't—if possible, avoid using terms which are terms of art, like “infiltration,” and tell us concretely what you mean by those things.

A. Well, I like to express myself the way I want to.

Q. Yes, go ahead. [35]

A. Would you repeat the question?

Q. Tell us—I will try to state it more succinctly. Tell us specifically what you were instructed by the Committee or by the Committee's representatives



(Testimony of William A. Wheeler.)

to look for or to inquire about in your investigation of Communist activities in this area.

A. Approximately six months before the hearing I was instructed by the Chief Investigator, Louis J. Russell, to investigate the San Francisco Bay Area to determine if the Communist Party had made any progress in organizing unions, infiltration of organizations, had penetrated defense industries, or any other subject concerning the Communist Party, and then to make a recommendation, if the information gathered would warrant a hearing. It was important enough to bring four or five members of Congress out here, at least in our opinion.

Q. All right. You have used the word "penetrated"; used the word "infiltrated." I will ask you what you understood those terms to mean in connection with the instructions you received from the Committee.

A. I would like to have my answer read back concerning the term infiltration, which I previously——

The Court: You may answer this question.

The Witness: I understood the Committee—the word "infiltration" to mean, in my particular investigative work concerning the Communist Party, that a small group of Communists [36] infiltrate, go into an organization and industry and seek to influence it and gather control. And penetrate—I would give the same definition.

Q. For what purpose? For what end?

A. Now, I don't follow you.

(Testimony of William A. Wheeler.)

Q. The question is penetrate or infiltrate for what purpose?

Mr. Nelson: Object——

A. To influence this organization.

Mr. Nelson: Already testified——

The Court: He may answer that; I think he has answered it before.

A. (Continuing): To influence this organization in its policy, to capture control of this organization, to wield it toward the Communist line for that particular time.

Q. Did you have any information or any evidence before you as to what those purposes were for which the Communists were infiltrating industry?

A. Not when I began the investigation.

Q. Well, as you proceeded? A. Certainly.

Q. And what was that?

Mr. Nelson: Objection, your Honor. This doesn't go to the subject of inquiry. The Government purposely limited the witness' testimony to the subject of pertinency. Now, he is trying to put in a defense case by way of cross-examination. [37] I submit, your Honor, that he can call the man as his own witness at the present time.

Mr. Edises: May it please the Court, it doesn't seem to me that the question of pertinency, which is part of the Government's affirmative case here, is to be confined to what the Government counsel thinks is proper to bring out on direct examination, and that I am to stand here helpless, unable to go

(Testimony of William A. Wheeler.)

into any of the details of what he has brought out on direct examination.

Now, all of these things are matters that were gone into in direct examination in outline, and I am simply now endeavoring to fill in the outlines, as is proper, it seems to me, under cross-examination.

The Court: I don't know, counsel, that you have a right under cross-examination to ascertain the results of his investigation. He was put on merely for the purpose of showing he was making an investigation, made a report for the purpose of a hearing, and these persons were to be brought before that hearing. But I do not think by cross-examination that you are entitled to obtain from this witness all of the results of his examination.

Mr. Edises: Perhaps I am—maybe I phrased it in an unfortunate way, but on direct examination counsel endeavored to establish that the purpose of the inquiry was to investigate so-called Communist infiltration or penetration of industry in [38] the San Francisco Bay Area. Now, I simply want to get some more detail, some understanding of that purpose.

The Court: Well, I think he has given you that, counsel, in answer to your question.

Mr. Edises: He has given me a certain portion of it.

The Court: Now asking what he found, and I don't think that is the same thing as asking him the result of his investigation, and I don't believe that that is within the realm of cross-examination.

(Testimony of William A. Wheeler.)

Mr. Edises: Well, let me put it a little differently.

Q. Am I correct, Mr. Wheeler, in understanding your testimony to mean that the purpose of the inquiry was to investigate the extent to which Communists were infiltrating or penetrating industry in the San Francisco Bay Area for the purpose of promoting the Communist Party line, is that right?

A. For promoting the Communist Party—it was all related, so no different.

Q. For promoting the Communist Party and the Communist Party line, is that right? A. Yes.

Q. And what relation to the purpose of the inquiry did the so-called development of the Communist Party line play?

A. I don't follow your question.

Q. Well, you answered in response to one of my questions that one of the purposes of the infiltration which you are inquiring [39] into was to promote the Communist Party line.

The Court: Now, counsel, that was an expression that you used yourself. The witness first said he didn't know what you were talking about, finally added it to another phrase, and he accepted the phrase. That was your phrase, not the witness'.

Mr. Edises: May I respectfully dissent from your Honor's observation. I think the record will show he first used the expression.

The Court: I don't recall he did. Go ahead.

Q. (By Mr. Edises): You remember whether you first used that expression, Mr. Witness? Didn't



(Testimony of William A. Wheeler.)

you use the expression "Communist Party line"—  
"promoting the Communist Party line"?

A. That is correct.

The Court: You used that expression today?

The Witness: Yes, as I recall.

The Court: I am sorry, I didn't recall that.

Mr. Edises: I believe he did, your Honor.

Mr. Nelson: I submit, your Honor, that he has testified the purpose of the inquiry was to find out whether there had been any infiltration, not what the purpose of such infiltration might be.

The Court: You have your objections to the questions as they come up. There is nothing pending now.

Mr. Edises: I believe there is. I will reframe the question. [40]

Q. What did you understand—what did you have in mind when you used the expression, "promoting the Communist line in industry"?

Mr. Nelson: I will object, your Honor, as being beyond the scope of the direct examination and irrelevant.

The Court: I will permit the witness to answer that question briefly, if he can.

Mr. Edises: Would you read the question?

(Record read.)

A. Well, that would relate directly to the men in industry who are members of various unions where resolutions were passed in these unions on the floor that advocate the Communist Party line



(Testimony of William A. Wheeler.)

and are run concurrently with the Soviet foreign policy.

Q. What does the place of employment of a witness have to do with the purpose of your inquiry?

A. The routine question for identification of the witness.

Q. No other purpose at all?

A. In the event the witness has moved since the issuance of the subpoena, and the fact that there are citizens in the community who bear the same name, it might do an injustice just asking a person what his name is. He says "John Smith." I think it would do all the John Smiths in the Bay Area a gross injustice.

Q. I see. Now, Mr. Witness, I want to get this straight. The only purpose that the subcommittee had in mind in asking [41] Mr. Fagerhaugh where he was employed was to be sure that you have the right Mr. Fagerhaugh and not confuse him with some other person, is that right?

A. That is my opinion, from my viewpoint as an investigator of the Committee. I have never heard the other members express themselves.

Q. Are you able to tell us what the pertinency of that question was from the standpoint of the Committee?

Mr. Nelson: Been asked and answered, your Honor.

The Court: He may answer if he can; yes or no.

A. I don't know what is in the gentleman's mind on the Committee, but every place I have appeared

(Testimony of William A. Wheeler.)

as a witness, they always asked me my address and where I was employed.

Q. Now, do you recall the testimony of Mr. Fagerhaugh on the occasion in question?

A. Well, I was present. I couldn't repeat it verbatim, no, or if you repeated it to me I don't know. I don't know what you have in mind.

Q. Do you recall whether or not Mr. Fagerhaugh's street address appeared on the subpoena that was issued for him?

A. A street address appears on the subpoena issued to him. I assume it is his address.

Q. And do you recall whether the witness, Mr. Fagerhaugh, was asked at the hearing what his residence address was?

A. I believe he was. [42]

Q. Don't you remember the following question being asked and the following answer being given? I am reading from page 3667, counsel.

"Mr. Kunzig: ——"

By the way, who is Mr. Kunzig?

A. Mr. Kunzig is counsel for the Committee on Un-American Activities.

Q. "Mr. Kunzig: Mr. Fagerhaugh, would you state your address, please?"

"Mr. Fagerhaugh: I live at 2285 East 19th Street, Oakland."

You recall that question being asked and the answer being given?

A. I have no independent recollection. However,

(Testimony of William A. Wheeler.)

if it is in the transcript I certainly think it was asked.

Q. Now, when that question was asked of Mr. Fagerhaugh—by the way, you recall also that he stated his name to be Ole Fagerhaugh, don't you?

A. Yes.

Q. When he was asked and answered the question as to his name and address, did the Committee not consider that he had identified himself as the person whom they wanted to subpoena?

Mr. Nelson: Objection, Your Honor; not qualified to answer that.

The Court: Sustained.

Q. (By Mr. Edises): Did you not, as a representative of the [43] Committee at that time who had participated, by your own admission, in formulating these questions, not consider that he had identified himself as the Ole Fagerhaugh you wanted to question? A. I certainly did not.

Q. You certainly did not? In other words, you were of the opinion that there might be two Ole Fagerhaughs living at 2285 East 19th Street, Oakland, and you didn't want to take any chance of confusing them, is that right?

A. That is right.

Q. I take it, then, Mr. Wheeler, from your answers, that the question of where a person is employed, what industry he is employed in, is a matter of complete indifference to the Committee, is that correct?

(Testimony of William A. Wheeler.)

Mr. Nelson: Objected to, Your Honor; nothing in the evidence to show that——

The Court: Sustained.

Mr. Nelson: ——any question was asked what industry he was employed in.

Q. (By Mr. Edises): Were you, in the course of your investigations for the Committee and pursuant to their instructions, investigating the International Longshoremen and Warehousemen's Union or any of the industries organized by the International Longshoremen and Warehousemen's Union?

Mr. Nelson: Objected to, Your Honor; beyond the scope of [44] the direct examination, not who he was investigating, but what the purposes of the investigation were is all that he testified to.

Mr. Edises: May it please the Court, it seems to me that the witness on his own direct examination testified that the investigation of industry, so-called Communist infiltration of industry in the Bay Area, was a part of the purpose of the investigation.

The Court: That's right, but I think you are still asking now for what he found in his investigation, counsel.

Mr. Edises: Very well, I will rephrase that.

Q. Was one of the purposes of your investigation to investigate any aspects of the functions or operations of the International Longshoremen's and Warehousemen's Union in this area?

A. I have no specific instructions to investigate the ILWU.



(Testimony of William A. Wheeler.)

Q. Did you have any instructions of any kind with respect to the ILWU in this area?

A. No, sir.

Q. Did you have any instructions with respect to investigating any of the industries organized by the ILWU? What is your answer?

A. Well, we were interested in the California Labor School. I don't know whether it is an instruction or not.

Q. Was one of the purposes of your investigation, Mr. Wheeler, investigating the penetration or infiltration of Communists into [45] industry in the Bay Area?

A. Yes, but I am not instructed to investigate this or that.

Q. What industries were you told to inquire into?

Mr. Nelson: Been asked and answered, Your Honor.

The Court: I think he has.

Mr. Edises: I don't believe he answered that question, Your Honor.

The Court: I think he has answered, no special industry, but he gave them certain designations, not any particular ones.

Mr. Edises: I submit that I should be permitted a certain latitude on cross-examination, Your Honor.

The Court: Perfectly willing to give you that, counsel, but I am not going, in this trial, which involves merely one issue, I am not going to have



(Testimony of William A. Wheeler.)

this witness testify as to the results of his investigation.

Mr. Edises: I don't wish to go into that, and as a matter of fact these questions I am asking go now to the purpose of his investigation and I intend to be limited to that; not asking him about his findings and I would like to make that clear. I am asking whether his instructions contemplated——

The Court: He answered.

Mr. Edises: ——an investigation or whether he understood his authority to include an investigation into industries organized by the ILWU.

The Witness: I said no. I repeat it. [46]

Q. (By Mr. Edises): Were you aware at the time that you undertook your investigation, Mr. Wheeler, or at the time that you prepared your questions to be asked of witnesses, that Mr. Harold H. Velde, Chairman of the Committee, had publicly stated as follows:——

Mr. Nelson: Your Honor, I will object to that.

The Court: Let him finish the question, counsel.

Q. (By Mr. Edises): "The subject of the San Francisco investigation will be Communist infiltration into unions in Northern California. Mr. Velde said particular attention would be given to Harry Bridges, President of the International Longshoremen and Warehousemen's Union."

Mr. Nelson: I will object on the basis there is no qualification of the source of his information.

Mr. Edises: I am asking him whether he was aware of it.

(Testimony of William A. Wheeler.)

Mr. Nelson: The witness hasn't said he was aware of any of them.

The Court: He was asked whether he is aware. You may answer yes or no.

The Witness: Would you read it again?

(Record read.)

A. I don't know the date of your newspaper article, Mr. Edises, but I imagine that that was a statement by Mr. Velde after I had concluded a preliminary investigation and had [47] reported some of the results to Washington and said it looked like the ILWU and some of the related unions were Communist infiltrated.

Q. (By Mr. Edises): Did you make such a statement in your report?

The Court: It is immaterial whether he did or not, counsel.

Mr. Edises: May it please the Court, I believe that it is certainly reasonable inference from the testimony that the Committee's inquiry was based at least in part on his report. In the second place, I think he testified that it was. Now, how can we learn the purpose of the Committee's inquiry in order to determine the pertinency of the question asked without going into this matter?

The Court: Proceed.

Mr. Edises: May I state, Your Honor, had the Government called Mr. Velde or called someone else who had direct responsibility, we would then be in a position to ask these questions directly. But

(Testimony of William A. Wheeler.)

the Government has not called Mr. Velde, and under the circumstances we are bound to use what, in substance, is secondary evidence; hence the more or less indirect way we have to go at this.

Was there an answer to the last question?

The Court: I said it was immaterial, counsel, the last question. Proceed to the next question.

Q. (By Mr. Edises): Now, when did the Committee open its [48] hearings in San Francisco, Mr. Wheeler? A. December 1, 1953.

Q. Were you present at any conferences of the Committee members with the press in which they made statements as to the purpose of the inquiry?

A. What period of time?

Q. Let us take around the opening date of the hearing, say the day they opened, or the day before.

A. I believe I was present when a member of the press interviewed Congressman Jackson. Now, I can't say for sure, I mean when, two or three days before the hearing started. Everything is in a turmoil, and I don't believe the whole committee called a press conference. If they did, I was not present, and I did not see Congressman Velde until the day the hearing started. He arrived late.

Q. Now, I asked you whether or not on or about the date that the hearings opened you were not present at a press conference with Representative Jackson in which Representative Jackson made the following statement:

"San Francisco was and is a natural target for the Communist conspiracy. Its vital defense activi-

(Testimony of William A. Wheeler.)

ties and its position as a great center of world communications render it a very desirable location for the infiltration effort.

“To what extent these efforts were [49] successful will be in a general way demonstrated during the forthcoming hearings.

“It is generally acknowledged that New York and California are the two focal points of the Communist attack. It is our job to determine what element of success attended the Communist efforts to obtain a firm foothold in this area. The Committee is particularly concerned with those aspects of infiltration which deal with vital defense and research establishments.

“Recent disclosures have indicated that no segment of our national life has escaped the attention of the Communist conspiracy and its agents.

“It has been established in sworn testimony that agents of the conspiracy were active in the San Francisco Bay Area in such deals as atomic research, national defense, communications, and labor.”

Mr. Nelson: Your Honor, I would submit no witness could say whether he was aware, having heard that verbatim.

Mr. Edises: Just a moment.

Mr. Nelson: He is going to read these long things into the record; have them broken up and ask sentence by sentence.



(Testimony of William A. Wheeler.)

Mr. Edises: Your Honor, the pending question is whether [50] he was present at a press conference where such a statement was made.

The Court: I recall the question. You may answer it, if you know.

The Witness: There was no press conference.

The Court: Just answer the question: Were you present at a press conference when that statement was made? Just answer the question yes or no.

The Witness: I don't know.

The Court: All right, that answers it.

Q. (By Mr. Edises): Were you present when Congressman Jackson made that or substantially that statement to any member of the press?

A. I was present with Congressman Jackson when he talked to a newspaperman on the Examiner.

Q. Was that Mr. Will Stevens?

A. That was Mr. Will Stevens.

Q. All right. Now, I ask you to look at this issue, rather, this clipping, from the the San Francisco Examiner of December 1, 1953, and tell us whether in substance——

Mr. Nelson: I will submit, Your Honor, it should be identified first before the witness testifies.

Mr. Edises: I am willing to identify it. Please mark this for identification. Mind if I use the photostat?

Counsel stipulated I may use the photostatic copies, Your [51] Honor. Please mark this for identification.



(Testimony of William A. Wheeler.)

The Court: Mark it Defense Exhibit B for identification.

(Whereupon photostatic copies referred to above were marked Defendant's Exhibit B for identification.)

Q. (By Mr. Edises): Now, showing you, or handing you Defense Exhibit B for identification, I will ask you whether you recognize the quotation attributed there to Congressman Jackson as in substance the remarks that Congressman Jackson made to Mr. Will Stevens on or about the time just mentioned? A. I do.

Mr. Edises: I would like to offer this in evidence as Defendant's Exhibit B, Your Honor.

Mr. Nelson: We will object, Your Honor. It hasn't been authenticated. It is heresay of the rankest order; it isn't relevant.

The Court: What is the purpose of the offer?

Mr. Edises: The purpose of it, may it please the Court, is twofold. First, it is a statement from a member of the Committee as to the purpose of the inquiry; and, second, it goes to the question of the reliability of this witness' statement that he knew nothing about any inquiry into the particular industries in the San Francisco Bay Area.

Mr. Nelson: First of all, Your Honor, even if it were authenticated it would still be third-hand hearsay as to what [52] the Congressman said. The best evidence is the man himself, if his testimony is to be brought——

(Testimony of William A. Wheeler.)

Mr. Edises: May it please the Court——

The Court: May be admitted, marked Defendant's Exhibit B.

Mr. Nelson: Your Honor, preserve those objections as to authenticity, hearsay, for the record?

The Court: The record is here. You can make it, Mr. Nelson.

Mr. Edises: Now, Mr. Wheeler, I show you what purports to be a clipping from the San Francisco Examiner for November 2nd, 1953, which contains a reference to yourself, William Wheeler, Committee staff investigator. See that reference? And I ask you whether you recall having conversation with Mr. Will Stevens of the San Francisco Examiner on or about the date—— A. I do.

Q. ——here indicated? A. I do.

Q. I ask you whether you are the source of the statements contained in this column. Will you look at it? A. May I read it?

Q. Yes, sure.

(Witness reading document.)

A. Would you repeat the question?

(Question read.)

The Witness: Of the three columns? [53]

Mr. Edises: Yes.

A. It was written as a result of a conversation with me. However, it is doctored up.

Q. Well, was there any other person giving information to Mr. Stevens at the time besides yourself? A. I wouldn't know.

(Testimony of William A. Wheeler.)

Q. Well, would someone know better than you, Mr. Wheeler?

A. I don't understand your question.

Q. I asked whether there was some other person at the time and place that you had your conference with Mr. Stevens.

A. No, just Mr. Stevens and I were present. He located me here and called me up.

Q. And you have indicated that the material in this story of November 2, 1953, was based on information that you gave him, is that right?

A. I am not going to state that it all was based on information I gave him.

Q. Would you please——

The Court: Now, counsel, what is the materiality of this thing? If it is material, I am willing to go into it; if it is not, I am not. What is your purpose?

Mr. Edises: Your Honor, it goes to the purpose of the Committee's inquiry.

The Court: For the purpose of impeaching this witness?

Mr. Edises: It goes—— [54]

The Court: Is it for the purpose of impeaching this witness?

Mr. Edises: Not primarily, Your Honor.

The Court: Then I don't believe it is material. If it is for his impeachment I will allow it, but if it is not, I will not admit it.

Mr. Edises: It is impeaching to this extent, that it indicates that——

(Testimony of William A. Wheeler.)

The Court: Let me see it. Do you have a copy of it?

Mr. Edises: Yes, I do. It does indicate that the witness definitely was investigating certain industries in this area.

The Court: Let me read it, please.

Mr. Edises: You will notice, No. 3, your Honor: "The Committee is interested in current infiltration among waterfront unions, \* \* \*"

Now, the witness testified a little while ago that he had no such interest as far as the ILWU was concerned, and I will submit the Court can take judicial notice that the ILWU is a waterfront union.

The Court: This may be marked Defendant's Exhibit C, or do you desire the photostat?

Mr. Edises: I would rather have the photostat go in.

Mr. Nelson: Your Honor, I want my objection.

The Court: Just a moment, Mr. Nelson. This may be marked Defendant's Exhibit C for identification. The document which was just handed to the Court is the one read and which the [55] witness has been questioned about, and it does not appear to me this is an impeachment, and if counsel desires to make an objection to it, the objection will be sustained. Do you desire to make an objection?

Mr. Edises: May I call your Honor's attention to the item numbered 3?

The Court: I have read that.



(Testimony of William A. Wheeler.)

Mr. Edises: And is it your Honor's view that that statement is not inconsistent with the witness' statement that he was not interested in investigating the ILWU?

The Court: I think it is not inconsistent. It is not impeachment of his present testimony. It may be marked for your record, however, as Defendant's Exhibit C for identification.

Mr. Edises: I had not quite completed the identification.

The Court: All right, you may go ahead.

Q. (By Mr. Edises): Would you please indicate what items in this exhibit, Defendant's Exhibit C, do not reflect what you told Mr. Stevens at that time?

Mr. Nelson: Your Honor, may I make a brief statement at this time?

The Court: Just make the objection, counsel, if you have one to make.

Mr. Nelson: I object to it on the ground that even if it is intended for impeachment purposes, you can't impeach a witness by a statement he didn't write, he didn't sign. [56]

Mr. Edises: I don't think that is good.

The Court: I take it that the question just asked by counsel is immaterial. I looked at the document. It does not appear to be impeachment of the witness, and the objection to it has been sustained, counsel.

Mr. Edises: I simply wish to base certain questions to the witness on the material——



(Testimony of William A. Wheeler.)

The Court: I am not permitting you to go into it, and as I told you before, counsel, this investigation and the results of it were for one limited purpose and I am not going to go beyond that. There is no question pending.

Mr. Edises: I take it——

The Court: If there was an objection it is sustained.

Mr. Edises: For the record, your Honor, I wish to ask the witness certain questions based on this document that may or may not be in compliance with your ruling. I don't know.

The Court: Proceed.

Q. (By Mr. Edises): Mr. Wheeler, did you on the occasion in question make the statement to Mr. Will Stevens in substance that:

“The Velde Un-American Activities Committee hearings scheduled to begin here December 1, are being designed to ‘pull out Communism by the roots’ in the San Francisco Bay Area, \* \* \*”

A. I did not make the statement, “pull out Communism by the [57] roots.”

Q. Did you make a similar statement?

A. I made the statement the hearings would begin here on December 1.

Q. Did you say anything about what you intended to do with Communist activities in the Bay Area?

Mr. Nelson: Objection, your Honor. That is too broad.

The Court: I take it it is immaterial, counsel.

(Testimony of William A. Wheeler.)

If it is not impeachment of it, then what he said at that time has no place in this record.

Mr. Edises: Your Honor, I think that your Honor's observations would be correct if the witness had not been put on the stand for the purpose of proving the purpose of the Committee's inquiry. Now, he apparently is the authority as far as the Government is concerned on what the purpose of this inquiry was. I can't examine Congressman Velde, because I haven't brought him here. This is the man the Government represents as the source of information upon which we can judge the pertinency of the question answered.

Now, how can I proceed to do that unless I am permitted to examine this man? If I am not permitted to go into his understanding of the pertinency, then I move to strike his entire testimony on the ground that it is demonstrated he is not qualified to testify to the purpose of the Committee's hearings in San Francisco, and I so move. [58]

The Court: It may be denied.

Mr. Edises: Make a more limited request—I move to strike the testimony of this witness with respect to the purpose of the Committee's hearings in San Francisco.

The Court: The motion may be denied.

Q. (By Mr. Edises): When you conferred with Mr. Will Stevens of the San Francisco Examiner, were you conferring with him as the representative of the Committee in this area?

(Testimony of William A. Wheeler.)

Mr. Nelson: Objection, your Honor. This is entirely beyond the scope of the direct examination. Let him make the witness his own witness for his defense case.

The Court: Sustained.

Q. (By Mr. Edises): Did you on that occasion make the statement that the Committe hoped to neutralize the value of subpoenaed witnesses to the Communist Party?

A. Not exactly that way.

Q. What did you state?

A. It is awful hard to recall—trying to do it the best I can. I believe I said the exposure of the Communist Party would neutralize the active members. The word “neutralize” is mine; I will take credit for that.

The Court: It is 12:00 o'clock, counsel, and we will take an adjournment at this time until 2:00 o'clock. The Court is waiting for the Grand Jury to come in, so the courtroom will be cleared. [59]

(Whereupon other matters were considered by the Court.)

(Whereupon an adjournment was taken until 2:00 o'clock p.m. this date.) [59-A]

October 14, 1954—2:00 P.M.

(The witness, William A. Wheeler, resumed the stand under cross-examination by Mr. Edises.)

Q. (By Mr. Edises): Mr. Wheeler, I believe that there is already in evidence Parts I and IV of

(Testimony of William A. Wheeler.)

the Committee's investigation of Communist activities in the San Francisco area, and I would like to have you, if you will, identify for us the remaining volumes in that series. I hand you a document, ask you if this appears to be Part II of the Committee's——

A. Yes, sir.

Q. ——hearings.

Mr. Edises: I would like to offer this in evidence as Defendant's Exhibit next in order.

The Court: May be marked Defendant's Exhibit D.

(Whereupon copy of transcript, Part II, referred to above, was received in evidence and marked Defendant's Exhibit D.)

Q. (By Mr. Edises): And, similarly, does this appear to be Part III of those hearings?

A. Yes, sir.

Q. And then the last is Part V. Does that appear to be Part V of the Committee's San Francisco hearings?

A. Yes, sir.

Q. And as far as you are aware, are there any other volumes [60] of this particular investigation?

A. I believe that is all that I have knowledge of.

Q. Five in all?

A. It lasted five days, and I think each volume covers each day.

Mr. Edises: I offer Part——

The Court: Part III may be marked Exhibit E and Part V may be marked Exhibit F.

(Whereupon copies of transcripts, Part III and Part V, referred to above, were marked



(Testimony of William A. Wheeler.)

respectively Defendant's Exhibits E and F and received in evidence.)

Q. (By Mr. Edises): Now, Mr. Wheeler, are you generally familiar—by the way, how long did you say you worked for the Committee on Un-American Activities? A. A little over seven years.

Q. Are you generally familiar with the publications of the Committee? A. Yes.

Q. And particularly the publications during the more recent years, say since you have been with them?

A. Yes. Well, just since I have been with them I have knowledge of.

Q. I want to ask you, if you will be good enough, to identify for us certain publications which I believe are publications of [61] the Committee. I hand you first a document which purports to be the publication, I believe, of the Committee on Un-American Activities, entitled "One Hundred Things You Should Know About Communism," ask you whether you are familiar with that publication?

A. Well, I know it was published by the Committee; I didn't have anything to do with the writing.

Q. I understand that. This appears to you to be the publication you have just said you are familiar with? A. Yes, sir.

Mr. Edises: May I have this marked for identification, your Honor? And I would like to indicate that I do not wish at this time to offer these in evidence, but merely have them identified for a subse-



(Testimony of William A. Wheeler.)

quent offer.

The Court: All right, that may be marked Exhibit G for identification. Photostatic copy of it.

Mr. Edises: Oh, I should state that I am not interested in the entire volume, which is approximately 126 pages.

The Court: Only marked for identification at this time anyway.

Mr. Edises: Yes. Very well, we will have this marked for identification, please.

(Whereupon the publication referred to above was marked Defendant's Exhibit G for identification.)

Q. (By Mr. Edises): And I show you another pamphlet which is [62] entitled, "Colonization of America's Basic Industries by the Communist Party of the U.S.A.," which apparently bears the publication date of September 3, 1954, and ask you whether you are familiar with that publication?

A. Never seen it before.

Mr. Nelson: Objection, your Honor. That is subsequent to any date involved in this matter. I think this would be completely immaterial to anything before this Court, on its face subsequent to the date of the alleged crime.

The Court: The witness said he has never seen it.

Q. (By Mr. Edises): I hand you, I show you a publication supposed to be a publication of the Committee on Un-American Activities entitled "The

(Testimony of William A. Wheeler.)

Shameful Years''; ask you if you are familiar with that?

The Court: Counsel, may I say this: You say you are not offering these at this time in evidence. I take it what you are doing is not cross-examination, even though you are identifying them. If you desire to put this witness on as part of your case some time, wouldn't that be the proper time to present these?

Mr. Edises: I will accept your Honor's suggestion if the witness be instructed to remain available for such purpose.

The Court: All right.

Mr. Edises: And I have no further questions of the witness at this time. [63]

The Court: All right.

Mr. Edises: Will the witness be instructed to remain available?

The Court: Well, you mean until what time, counsel?

Mr. Edises: Well, he would have to be available; since I understand your Honor does not wish to have me go into these matters now, I would say at least through tomorrow. I have no idea, of course, how long Government's case is going to last.

The Court: The witness should be here tomorrow, then.

The Witness: Yes, sir.

Mr. Nelson: I have just two questions, Mr. Wheeler. Strike that—make it one.

(Testimony of William A. Wheeler.)

Redirect Examination

By Mr. Nelson:

Q. With reference to the reporter who took the transcript of the hearings, which were held in San Francisco, and particularly the hearings held on December 4, 1953, are you acquainted with the home address of that reporter, that is, the locality from which that reporter came?

A. Well, her home is in Chicago.

Q. As far as you know, she came from Chicago.

Recross-Examination

By Mr. Edises:

Q. Do you know whether she is in Chicago [64] now?

A. The Committee has a contract with Hart——

Mr. Edises: Just a moment. I want to ask—object to that on the ground it is not responsive. The question is, do you know whether she is in Chicago now?

The Court: Just answer the question.

A. No, sir.

Mr. Edises: No further questions.

The Court: You may step down.

(Witness excused.)

Mr. Nelson: Your Honor, in proceedings of this type it has been the practice in the past to read into the record before the Court the entire testimony of the witness as it was given on the day in question. Now, the testimony is before you in printed

form and the only advantage that would have, as I can see, would be to put before both counsel for the defendant and your Honor before the argument on any matters of law.

The Court: I have read it, counsel; no necessity of reading it again.

Mr. Nelson: We will call Mr. Charles W. Kinsey, your Honor.

CHARLES W. KINSEY

called as a witness on behalf of the Government, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows: [65]

The Court: State your name, please.

The Witness: Charles W. Kinsey.

Direct Examination

By Mr. Nelson:

Q. What is your address, Mr. Kinsey?

A. 2004 Cambridge Drive, Alameda, California.

Q. What is your occupation?

A. Personnel director of the Oakland plant, Owens-Illinois Glass Company.

Q. How long have you been employed by the Owens-Illinois Glass Company?      A. 35 years.

Q. Are you acquainted with the defendant in this action, Mr. Ole Fagerhaugh?      A. I am.

Q. And is the gentleman seated in the middle of that table Mr. Fagerhaugh?      A. Right.

Q. You have access to the employment records of the Owens-Illinois Glass Company in its Oakland plant?      A. I do.



(Testimony of Charles W. Kinsey.)

Q. Are you familiar with the records insofar as they pertain to the defendant, Mr. Fagerhaugh?

A. Yes.

Q. Will you state when he was first employed by the Owens-Illinois Company? [66]

A. May, 1949.

Q. Will you state whether or not he was employed by the Owens-Illinois Glass Company on December 4, 1953? A. He was.

Q. In what capacity? A. Warehouseman.

Mr. Nelson: I have no further questions. You may cross-examine.

### Cross-Examination

Mr. Edises: Just a few questions.

Q. Mr. Kinsey, you testified that on December 4, 1953, Mr. Fagerhaugh was in your employ. Do you know whether he was likewise working for you on October 28, 1953?

A. As far as I know, yes.

Q. And do you recall an occasion when Mr. Fagerhaugh was served with a subpoena?

A. Directly, no. I did know of it, though.

Q. In the course of your duties as personnel manager you received notice of his being served, right? A. Right.

Q. And he was served on your premises, that is, at the Owens-Illinois plant in Oakland, isn't that right? A. Yes.

Mr. Edises: I have no further questions of the witness. [67]



(Testimony of Charles W. Kinsey.)

Mr. Nelson: I have none.

The Court: That is all. Thank you.

(Witness excused.)

Mr. Edises: Could I have just a moment, your Honor? I may possibly want to call——

(Counsel leaves the courtroom.)

Mr. Edises: Your Honor, I have one question to ask of the preceding witness, and I very much dislike to ask him to return for the purpose of asking that one question. I believe that it would probably be ruled improper cross-examination, so I would like to ask the permission of the Court, therefore, to put him on as the defendant's witness for the purpose of asking that question.

The Court: All right. No objection?

Mr. Nelson: The Government is about to rest, your Honor, if that will simplify the thing.

Mr. Edises: Well, all right.

The Court: Are you resting?

Mr. Nelson: We will rest.

Mr. Edises: Very well.

### CHARLES W. KINSEY

recalled to the stand, on behalf of the defendant, previously sworn. [68]

### Direct Examination

By Mr. Edises:

Q. Mr. Kinsey, is the Owens-Illinois plant at Oakland under union contract with the International Longshoremen and Warehousemen's Union?

(Testimony of Charles W. Kinsey.)

A. Yes.

Mr. Nelson: I will object to that. I don't see it is relevant.

The Court: Well, I will permit it. The answer was yes?

The Witness: The answer is yes.

Q. (By Mr. Edises): For what period of years has that been true?

A. I am not sure; I believe since about 1936 or '37, that is, Oakland or the predecessor plants.

Mr. Edises: No further questions.

The Court: That is all. The witness now may be excused?

Mr. Edises: Yes.

(Witness excused.)

Mr. Edises: May it please the Court, I am somewhat taken by surprise at the early conclusion of the Government's case and I am not quite prepared to proceed with my case at this time. My case, may it please the Court, is almost entirely a documentary case. And a part of it, under the rule of the *Kasowitz* and *Alexander* cases in the Ninth Circuit, will consist of the offering of certain newspaper stories to show the general settings, the so-called background of danger of [69] possible prosecution which influenced or which had a bearing on the assertion by the witness against the privilege of self-incrimination. So I suggested to counsel earlier that we would be very happy to supply him photostatic copies of those clippings in order for him to satisfy himself as to their authenticity. However, he was

good enough to indicate that he wanted further foundation, and, of course, under those circumstances, we have got to supply the foundation. I do not have the witness presently available and will have to take steps to obtain such a witness. I think that I can probably accomplish that in the next thirty minutes. I could be mistaken, but I think I can.

The Court: You could do what in thirty minutes?

Mr. Edises: Get the witness to establish the foundation for these articles, since the Government is unwilling to stipulate.

The Court: What are you not willing to stipulate to?

Mr. Edises: The Government is unwilling to stipulate that this, for example, is a story from the San Francisco Examiner, that this is the story from the San Francisco Chronicle on the date it bears, that this is a similar story from the San Francisco Examiner, although, as I say, we have the printed stories here and photostatic copies for counsel if he cares to examine them. But they insist we have got to provide some further foundation before they will believe they are authentic, [70] so we have no other recourse.

The Court: Is that your position?

Mr. Nelson: I think that is a fair statement of our position.

The Court: Why do you take that position, counsel?

Mr. Nelson: Well, your Honor, I know of no reason that these so-called newspaper stories should be admitted without authentication to which any documentary evidence is subject. I have my doubts about their relevancy.

The Court: You have your objection as to their admissibility and their relevancy. What we are talking about now is a question of authentication, and you have a perfect right to make any proper objection at the time they are offered, but talking about merely now the authentication of the articles.

Mr. Nelson: Where the newspaper clippings themselves state the name of the newspaper and date, I will relax my objections to authentication. Where any of the newspapers have the date written in on a piece of paper to which these clippings are pasted, I must insist they be authenticated.

Mr. Edises: They all have that.

The Court: All have what?

Mr. Edises: They all have on them—they have the clippings and then on the adjoining sheet of white paper is the statement of the name of the newspaper and the date so that none of them, as far as I know, have the name of the newspaper [71] printed on them, with one or two exceptions, where we happened to have the front page; in other instances that is not available.

Now, we, as I say, have copies for counsel. We can let them have those photostats and if at any time it should be, if there is any error, certainly we would be more than happy to make any correction that is necessary. Apparently this is not sufficient, however, to counsel.



Mr. Nelson: I object, your Honor, to being placed in the position of having to verify the defendant's exhibits. If he has evidence to show, then let him do it by the rules of evidence and authenticate it; that is not our job.

The Court: I appreciate it is not your job, Mr. Nelson, but we are also anxious to expedite this proceeding and I think that both sides should take part in that expediting.

Mr. Nelson: Perhaps if your Honor gives us five minutes I will go over these clippings, see whether or not I can relax my objection to all or a substantial part of them.

The Court: How did you expect to authenticate them, bring somebody from the newspaper?

Mr. Edises: Two possibilities suggest themselves to me; one, I could bring the librarian of each of the five Bay Area newspapers. The second, the young lady who operates the clipping service, happens to be the ILWU Research Department, which made those clippings, could probably identify [72] the newspapers from which she made the clippings.

The Court: I would think you could make some investigation or examination and maybe some telephone calls that might satisfy you about the matter so that we could proceed as expeditiously as possible. I will take a recess so that you can see what you can do about it.

(Short recess.)

Mr. Nelson: May it please your Honor, we have satisfied ourselves as to these documents and we will stipulate as to their authenticity.



Mr. Edises: Thank you, counsel.

The Court: Counsel, you stated you were offering them under the theory of a certain case. What was that case?

Mr. Edises: One of them, your Honor, is Alexander versus the United States, 181 Federal 2nd 480. The mother is Kasinowitz versus the United States, 181 Federal Reporter, 2nd Series.

The Court: Second?

Mr. Edises: Second series, 632. Both are Ninth Circuit cases. The Alexander case was decided in February, 1950. The Kasinowitz case was decided in April, 1950, and the substance of those decisions, may it please the Court——

The Court: You go ahead, offer them, and I will get the case, be reading it while you are offering them, counsel.

Mr. Edises: Very well.

I offer first a story from the San Francisco Chronicle, [73] dated October 29, 1953, bearing the headline, "Un-American Probe Opens Here December 1," and in the second column the headline reading, "Red Hearing Scheduled for S.F.," and I ask leave to substitute a photostatic copy for the original.

Mr. Nelson: I wonder, counsel, if you would be good enough to state to the Court for what purpose these are offered?

The Court: Very well.

Mr. Edises: I thought I had stated that.

The Court: State it again, counsel.

Mr. Edises: The purpose is to show the exist-

ence of a background and setting such as would lead a reasonable mind to believe that answering questions asked by the Committee might lead or would possibly lead to prosecution.

In other words, it is a part of a background of danger which could lead a reasonable person to believe that he exposed himself to the possibility of prosecution should he submit to the Committee and answer their questions.

Mr. Nelson: One more question, and then I may be able to withdraw. Is there going to be any testimony or evidence, Mr. Edises, that the defendant knew of these clippings and read them?

Mr. Edises: I don't believe that there will be such because I have no present intention of having the witness take the stand, and it is my understanding that there is no necessity for showing that the witness personally knew of the particular articles in question; they merely go to show the general setting [74] and background.

I may add that there is, in these decisions, and in others which I could obtain readily for the Court, if you wish to have them, which state that the courts recognize that this is a type of proof which ordinarily would not be admissible, but they point out that to require the witness to himself have to take the stand and testify as to the reasons why he felt it necessary to assert his privilege against self-incrimination would be to defeat the very purpose of the constitutional provision which says that the witness cannot be forced to be a witness against himself,

and that is the reason that they make an exception of this type of evidence.

Mr. Nelson: Your Honor, I will admit I am not too clear in my recollection of the Alexander and the Kasinowitz cases, but it is my thought where newspapers are from a town other than the town in which the defendant lived, where there is absolutely nothing on the record to indicate he ever saw the newspaper clippings, that that failed to show anything which can be relevant to the case.

The Court: Well, suppose this were true, counsel; suppose he hadn't read them, actually, but suppose his attorney had read them and the attorney advised him by reason of the situation he should refuse to testify.

Mr. Nelson: Is there anything in the record, your Honor, that indicates the defendant knew of these clippings [75] which are offered as evidence. We deal entirely in suppositions when we put in newspaper clippings, and draw some further inference from that that the defendant had those in mind when he did certain things.

The Court: I think a lot of it goes to the weight when they don't put the witness on, but——

Mr. Nelson: Perhaps the attorney intends to take the stand and say that he saw them. Then my point is not well taken.

Mr. Edises: May I say, your Honor, as far as I am aware, the courts have treated this kind of evidence with the greatest liberality, recognizing it would be to defeat the very purpose of the privilege against self-incrimination if we were to put the

witness on the stand here and ask him what were the circumstances that led you to assert your privilege. Obviously he would have to go into everything that the privilege is supposed to protect himself against discrimination.

The Court: Is this covered in the Alexander case?

Mr. Edises: I believe this is covered in both the Alexander and——

The Court: You go ahead and offer your exhibits, and then we will have the case here to look at, counsel.

Mr. Nelson: My objection, your Honor, will be a continuing one to all of these exhibits.

The Court: All right. [76]

Mr. Edises: I offer first a Chronicle story of October 29.

The Court: Defendant's Exhibit H for identification at the moment.

(Whereupon the Chronicle story, dated October 29, 1953, referred to above, was marked Defendant's Exhibit H for identification.)

Mr. Edises: Next I offer a San Francisco Examiner story of November 2, 1953, headed, "100 Top Bay Area Reds Face Exposure in Probe." And the second portion of which is headed, "Exposure for Top S. F. Reds," and I ask leave to substitute a photostatic copy for the original.

The Court: Exhibit I for identification.

(Whereupon the S. F. Examiner story, dated November 2, 1953, referred to above, was



marked Defendant's Exhibit I for identification.)

Mr. Edises: Next I offer a story in the San Francisco Examiner, dated December 1, 1953, headed, "House Red Hearing to Open Here Today. Velde Cites ILWU," by Will Stevens. This consists of two pages, may it please the Court, and I offer the exhibit and ask leave to substitute a photostatic copy.

The Court: Exhibit J for identification.

(Whereupon Examiner story, dated December 1, 1953, referred to above, was marked Defendant's Exhibit J for identification.) [77]

Mr. Edises: Next I offer a story in the San Francisco Chronicle for December 1, 1953, entitled, "Velde Arrives," and then, "U. S. Red Hunters Open Hearing in S. F. Today."

This, likewise, consists of two pages. I had previously planned to offer the first page, but counsel for the Government wants the whole thing, so I will put in the whole thing.

May I substitute a photostatic copy for the original?

The Court: Defendant's Exhibit K for identification.

(Whereupon Chronicle story, dated December 1, 1953, referred to above, was marked Defendant's Exhibit K for identification.)

Mr. Edises: Next I offer a story in the San Francisco Call Bulletin for December 1, 1953. There is a banner headline, "Key Bridges Aide Will Defy

Velde Quiz," on the first page, and on the second page the heading is, "Velde Quiz Opens; Protests Ignored."

I asked leave to substitute a photostatic copy for the original.

The Court: Exhibit L for identification.

(Whereupon Call Bulletin Story, dated December 1, 1953, referred to above, was marked Defendant's Exhibit L for identification.)

Mr. Edises: Now, may it please the Court, I wish to enlist Mr. Wheeler's assistance here in identifying some reports of the Committee on Un-American Activities. [78]

Will you resume the stand, please?

#### WILLIAM A. WHEELER

resumed the stand, on behalf of the defendant, previously sworn.

The Court: You are calling him as a witness in your case?

Mr. Edises: Yes, your Honor.

#### Direct Examination

By Mr. Edises:

Q. Did I ask you about this pamphlet entitled, "The Shameful Years"?

A. I am very familiar with it; it is a Committee publication.

Mr. Edises: May it please the Court, I wish to offer in evidence from the document entitled "The Shameful Years, 30 Years of Soviet Espionage in the United States," a publication prepared and

(Testimony of William A. Wheeler.)

released by the Committee on Un-American Activities of the House of Representatives, the following portions: The cover page, pages 1, 2 and 3, and with the permission of the Court I should like to substitute photostatic copies for the original.

Mr. Nelson: I wonder if I might look at that before——

The Court: Yes.

Mr. Edises: Look at the whole thing.

Mr. Nelson: You offered what pages, counsel?

Mr. Edises: The cover page, 1, 2 and 3. [79]

Mr. Nelson: May I ask what the purpose of the offer is?

Mr. Edises: Yes, the purpose is to show, in general, the object of the Committee in making its various inquiries into so-called Communist infiltration or penetration of industry, the fact that in the opinion of the Committee—and I want to make it entirely clear that I am not endorsing any of the positions or conclusions taken by the Committee or stated in these publications—but that in the opinion of the Committee, the so-called Communist activities and conspiracy, which is the expression of the Committee, involves various illegal actions, including violations of federal law, and this is very, very fully documented in the numerous reports of the Committee. I do not intend to offer all, of course, but merely certain extracts from them.

Mr. Nelson: I will object to the admission of this, your Honor, or any part of it on the ground that it is a publication of another Congress, a Com-

(Testimony of William A. Wheeler.)

mittee which was under the chairmanship of another Congressman, that it is dated over two years prior to any event now before this court and is, therefore, immaterial and completely incompetent to show what counsel has offered it to show.

The Court: May I see it, please?

Mr. Edises: It is a part of this background of danger that the witness was recently permitted to take into account in deciding whether or not he should exercise his privilege not [80] to be a witness against himself.

The Court: It may be admitted and marked Exhibit M.

Mr. Edises: I am offering merely certain portions as indicated earlier. May I be permitted to substitute photostatic copies?

The Court: You may substitute photostatic copies for it. I notice that the Committee consists of some of the same persons who were present at this hearing, Jackson and some of the others I happen to see.

Mr. Nelson: That is correct, your Honor, but if one considers how far back one can go and bind the Committee by what was said by prior Congressmen——

The Court: I think that is within the discretion of the Court as to how remote they can go.

Q. (By Mr. Edises): Now, I show you, Mr. Wheeler, what purports to be the annual report of the Committee on Un-American Activities for the



(Testimony of William A. Wheeler.)

year 1953, and ask you whether you are familiar with that document?

A. I recognize this Committee publication.

The Court: Well, now, counsel, the annual report for 1953 undoubtedly did not come out until the year ended, did it not, which would be after this hearing?

Mr. Edises: Yes, and may it please the Court, it contains, and I am offering it primarily for the purpose of showing what the Committee itself regards as the purpose of its San [81] Francisco hearings. It contains a statement by the Committee as to what they were trying to get at.

(Defendant's Exhibit M was received in evidence.)

The Court: All right; I didn't know that.

Mr. Nelson: May I see the pages in question?

Mr. Edises: Yes; I am offering at this time, your Honor, the cover page, and pages 4, 5, 6 and 7. To illustrate, if your Honor is interested, the first page contains a statement as follows:

"In December, 1953, a subcommittee of the Committee on Un-American Activities held hearings in San Francisco, California, which hearings dealt in large part with the nature, scope and objectives of Communist infiltration in that vital defense area and center of West Coast communications."

The Court: All right, I get your point.

Mr. Nelson: Is this an extra copy?

Mr. Edises: Yes.

Q. I show you a document entitled "Annual Re-

(Testimony of William A. Wheeler.)

port of the Committee on Un-American Activities for the Year 1952"—

The Court: The last offer was M. The 1953 report should take Exhibit N. Is that '53?

Mr. Edises: '53.

The Witness: Yes, this is a Committee publication.

Mr. Nelson: The offer on the annual report for 1952 is objected to for the same purpose.

(Defendant's Exhibit N was received in evidence.) [82]

Mr. Edises: Yes, but I haven't offered it yet.

Mr. Nelson: Oh.

Mr. Edises: I now offer in evidence, may it please the Court, the document just identified by the witness, being the annual report of the Committee on Un-American Activities for the year 1952, and, specifically, the cover page and the following pages, 5, 7, 8, 34 and 35. They are offered again for the same purpose indicated previously.

The Court: Marked Exhibit O.

(Whereupon the 1953 Annual Report and the 1952 Annual Report, referred to above, were received in evidence and marked, respectively, Defendant's Exhibits N and O.)

Q. (By Mr. Edises): Now, I hand you a document entitled "Annual Report of the Committee on Un-American Activities for the Year 1951," which was released on February 17, 1952, and ask you if you can identify this document?

(Testimony of William A. Wheeler.)

A. Yes, this is—I identify it as a Committee publication.

Mr. Edises: I should like to offer in evidence, if the Court please, the cover page and two pages from that document, pages 14 and 15.

Mr. Nelson: Your Honor, I will again renew my objection to the document from the preceding Congress which is over two years away from the times in question.

Mr. Edises: May it please the Court, none of this is [83] offered for the purpose of proving the truth of anything contained therein. It is merely offered for the purpose of showing the kind of setting in which the witness has asserted his privilege.

The Court: I will admit this, counsel, but I believe—I don't know what your purpose is, but I believe any offer of any report prior to that——

Mr. Edises: Only going back one more year.

The Court: Considerably remote.

Mr. Edises: I offer this in evidence.

The Court: I ruled upon that exhibit as being remote, putting in three years now, and I think anything beyond that would be remote, but you may offer it. 1951 may be Exhibit P.

(Whereupon the 1951 Annual Report, referred to above, was received in evidence and marked Defendant's Exhibit P.)

Q. (By Mr. Edises): Now, I show you a document entitled "Annual Report of the Committee on Un-American Activities for the year 1950," and ask you if you are able to identify that document?

(Testimony of William A. Wheeler.)

A. It is an official Committee publication.

Mr. Edises: Now, may it please the Court, I would like to indicate the special particular purpose for which I offer this document, or, rather, portions of it. The 1950 Report of the Un-American Activities Committee contains perhaps the most [84] extensive discussion of the ILWU, the union at the Owens-Illinois plant, the union to which Mr. Fagerhaugh belongs. And it purports to discover all sorts of nefarious activities of the ILWU, many of which I have no hesitation in stating I regard as completely fabricated and slanderous. Nevertheless, they are part of the background which any member, any person who is an active trade unionist would have to take into consideration in venturing to appear before this Committee investigating matters of the kind which it purported to be investigating in San Francisco. For that reason I submit it is relevant.

Mr. Nelson: I will object to it on the ground that it is not only remote, but there is no testimony in the record with regard to whether or not the defendant was a member of that union or with regard to that union being specifically involved in the subjects of the inquiry.

Mr. Edises: It is certainly clearly inferable, may it please the Court, from the articles in evidence, from the testimony—the testimony indicates he was a warehouseman—and from the testimony of Mr. Kinsey that the Owens-Illinois plant was organized by the ILWU.

The Court: I believe it is remote, counsel, but



(Testimony of William A. Wheeler.)

you say this is the last one you are going to offer, why, I will admit it.

Mr. Edises: May I be permitted to substitute a photostatic [85] copy, your Honor?

The Court: All right. All of it?

Mr. Edises: No, I thought I read the pages that I was interested in.

The Court: I don't think so.

Mr. Edises: I wish to offer the cover page, pages 16, 17, 18, 31 and 32. I have attempted to select only those portions which referred to the ILWU.

The Court: Exhibit Q.

(Whereupon the 1950 Annual Report, referred to above, was received in evidence and marked Defendant's Exhibit Q.)

Mr. Edises: Now, may it please the Court, the witness was unable to identify a document which I have here entitled, "Colonization of America's Basic Industries," which purports to be an examination of the purpose for which the Communist Party is alleged to desire to organize industry. I feel that it has a definite bearing on the propriety of the witness' assertion of his privilege against self-incrimination, because it is an official expression of the view that persons who are identified as Communists have as their objectives certain violations of federal law, which have a bearing on the assertion of privilege.

The witness cannot identify them, but the documents themselves bear the official seal of the United States. They [86] state on their face that they are

(Testimony of William A. Wheeler.)

publications of the Committee and they indicate that they are such official publications. I believe that the present rule is that there is a *prima facie* case of authenticity established by virtue of the fact that the document purports to be an official Government publication, and under those conditions I believe that the burden is on the Government to establish that the document is not authentic.

Mr. Nelson: Rather than go into the question of authenticity, I will ask counsel if there is a specific reference in here to either the San Francisco hearings or to the defendant?

Mr. Edises: No, there is no reference to the defendant or to the San Francisco hearings.

Mr. Nelson: I call your Honor's attention to the fact that it is dated ten months after the date of the crime alleged in the indictment and therefore could hardly have a bearing on the setting on which the defendant answered the question.

Mr. Edises: No, but it does have a bearing on the question of the danger which this witness would be exposed to.

Mr. Nelson: That danger could be relevant only at the time.

Mr. Edises: Wait a minute.

Mr. Nelson: Excuse me. [87]

Mr. Edises: No, it goes into what the Committee regards as its objectives in calling these witnesses and questioning them with regard to their activities.

The Court: Ten months after this occasion.

(Testimony of William A. Wheeler.)

Mr. Edises: The publication date was, that is true, but the material that is referred to all antedated the date of the hearings. There is nothing in here that refers to any time subsequent to the time of the hearings, and it purports to be a recapitulation of the previous findings of the Committee, all of which antedated the hearings in this case.

Mr. Nelson: Now, since counsel has made quite an extensive identification of this—of course, he is not under oath, or the document is not a certified copy. I will still state to your Honor it is entirely too remote to be admissible for the purpose offered.

Mr. Edises: May I say this, your Honor: It is the most direct expression I was able to find in the literature, of the voluminous literature put out by the House Un-American Activities Committee as to what they deem to be the type of activity carried on, allegedly, in industry, by so-called Communists, or the Communist Party.

The Court: How could that affect in any way the action of the defendant at the time, in December, 1953?

Mr. Edises: The pamphlet itself, I grant, could not, but the views expressed therein indicate what the Committee [88] regarded as the relevance or significance of their inquiries.

The Court: I am inclined to think the objection is good, counsel. You may mark it for identification.

Mr. Edises: I would like it marked for identification.

(Testimony of William A. Wheeler.)

The Court: R for identification.

(Whereupon the document entitled, "Colonization of America's Basic Industries," referred to above, was marked Defendant's Exhibit R for identification.)

Mr. Edises: I would like to offer it in evidence.

The Court: The objection may be—if there is an objection?

Mr. Nelson: There is an objection.

The Court: It may be sustained.

Mr. Edises: Can I be permitted to substitute a photostatic copy, your Honor?

The Court: That's all right.

Mr. Edises: And I don't know if the record indicated it, but I am offering only pages 13, 14, 15 and the cover page; and again I want the record to show that neither the—counsel in this case does not by any offer purport to endorse any of the contents——

The Court: You stated that already.

Mr. Edises: Your Honor, may I be permitted to withdraw Defendant's Exhibit G and to substitute a photostatic copy of the following pages: The cover page, pages 67, 76, 78, 80, 81, [89] 82, 84 and 87. That is the document entitled "100 Things You Should Know About Communism."

Mr. Nelson: That is still for identification only, I understand.

Mr. Edises: That, I believe, was admitted, wasn't it?

The Court: I have it marked for identification. That, wasn't it, however, prior to Kinsey?



(Testimony of William A. Wheeler.)

Mr. Edises: I would like to offer these pages in evidence.

The Court: This is on what date of this book?

Mr. Edises: May 14, 1951.

The Court: May I see it?

It may be admitted in evidence.

(Whereupon portions of Defendant's Exhibit G, formerly marked for identification, were received in evidence.)

Mr. Edises: At this time, may it please the Court, I wish to offer in evidence several pages from the Congressional Record, specifically the Congressional Record for May 11, 1954. The portions that I am offering, your Honor, are the debate which went on on the floor of the House of Representatives at the time that the citation of Mr. Fagerhaugh for contempt of Congress was voted, and particularly the statement of Mr. Jackson of the Committee as to the pertinency of the questions asked of Mr. Fagerhaugh.

The Court: That is in the file, isn't it? [90]

Mr. Edises: I believe——

Mr. Nelson: Attached to an affidavit which accompanied a pre-trial motion.

Mr. Edises: But at that time it was merely copied out, typewritten. I would like to offer a photostatic copy, if I may, of the original.

The Court: May be marked Exhibit S.

(Whereupon portions of Congressional Record, referred to above, were received in evidence and marked Defendant's Exhibit S.)

(Testimony of William A. Wheeler.)

Mr. Edises: Now, may it please the Court, when counsel offered Volumes I and IV of the Committee's San Francisco hearings, I believe his offer was limited to certain pages. I now wish to offer the remainder of these volumes.

Mr. Nelson: To perhaps save your Honor some difficulty, we will be happy to stipulate that the limitation on our offer may be withdrawn. In other words, rather than have two sets of exhibits here, one offer has clips around certain pages and others which do not—I will withdraw our offer and offer the entire volume in each case——

The Court: All right.

Mr. Nelson: ——if that is satisfactory.

Mr. Edises: Satisfactory.

The Court: Then the entire volume, I think Exhibit 7 is Part I and Exhibit 8 is Part IV, all of it may be admitted. [91]

(Whereupon the entire transcript, Part I and Part IV, were received in evidence and marked Plaintiff's Exhibits 7 and 8, respectively.)

Mr. Edises: May I inquire of the Clerk as to whether I now have in evidence all five volumes of the——

The Clerk: Yes.

The Court: Yes.

Mr. Edises: ——of the hearings.

The Court: All in evidence. Have you any further need for this witness?

Mr. Edises: Could I confer with my associate for just a moment, your Honor?

(Testimony of William A. Wheeler.)

Q. Mr. Witness, do you know whether the hearings in San Francisco were open to the public?

A. They were open to the public, yes.

Q. And do you know whether they were attended by newspaper reporters, various newspapers?

A. They were.

Q. And the press services?

A. They were.

Q. And they were widely reported in the press, isn't that true?

A. The coverage was good.

Q. Were there any radio broadcasts pertaining to the hearings?

Mr. Nelson: Your Honor, I will have to object to that [92] unless he can point out the materiality.

Mr. Edises: The cases have indicated, your Honor, that the question of publicity of these hearings is a material factor relating to the witness' reasonable fear that whatever he says there may lead to prosecution.

The Court: I will permit the answer. What do you mean by broadcast? You mean hearings actually broadcast themselves, or reports of them?

Mr. Edises: I was going to ask more specifically that question.

Q. Was there any broadcasting of the actual testimony itself?

A. Yes, sir.

Q. There was?

A. Yes, sir.

Q. And in addition, of course, there were radio news stories of the hearings, is that right?

Mr. Nelson: Objection, your Honor. He is on direct examination; those are leading questions.

(Testimony of William A. Wheeler.)

The Court: They are, but I will permit it.

A. Yes, sir.

Mr. Edises: No further questions of this witness, your Honor.

The Court: That is all, Mr. Wheeler. Thank you. You may now be excused, not required to be here tomorrow.

(Witness excused.) [93]

Mr. Edises: Your Honor, I believe that that will complete the defendant's case. I would like the privilege of conferring for about five minutes with my associate and in checking my notes in order to determine if there is anything further I wish to offer.

The Court: All right, take a recess for a few minutes.

(Short recess.)

Mr. Edises: At this time, may it please the Court, I wish to renew my motion to strike the testimony of Mr. Fagerhaugh appearing in Part IV of, rather, appearing in Plaintiff's Exhibit No. 8 at pages 3367 to 3371 on the grounds previously indicated. Your Honor will recall that you reserved ruling on that.

Mr. Nelson: The citations previously given to your Honor of the rule of criminal procedure which provides for the admission of official records of the United States Government, by incorporating the rules in such cases we feel adequately cover the case. Section 1773 of Title 28, United States Code, says



that the record is admissible to prove what happened, and there is no contention this is not a certified copy of a public official record.

The Court: The motion to strike may be denied.

Mr. Edises: May it please the Court, the defendant has no further evidence to offer at this time.

The Court: Government rests? [94]

Mr. Nelson: The Government has nothing, your Honor.

Mr. Edises: Your Honor, we wish to argue a motion to acquit, but I would like to ask the Court to put that over to a later date, preferably at a time when it could be combined with a presentation to the Court of such law as we have been able to find with respect to the offer of the defendant to purge. Whatever time would be satisfactory with your Honor would be agreeable to us.

The Court: Do you not think the whole matter might be better handled by written briefs?

Mr. Edises: It probably could, except that oral argument, of course, does give the opportunity of responding to the arguments of the other side, unless you wanted to have consecutive briefs.

The Court: Well, suppose we do it this way: Suppose the briefs be filed and after they are filed, then if counsel upon either side desires to have the matter set down for oral argument after the written briefs are in, we can see if that can't be arranged.

Mr. Edises: That is satisfactory to us.

Mr. Nelson: May I say this, your Honor: Previously a motion to dismiss was filed and six of the

seven grounds of that motion were postponed for decision to the conclusion of the trial.

The Court: I recall. [95]

Mr. Nelson: The Government did not file a reply brief to the six grounds, meeting them on the merits; merely filed a brief saying they should be postponed at this time until it has filed a reply to the six grounds to the motion to dismiss which I anticipate will meet a number of the grounds on the motion for acquittal, and ask leave to reply to whatever brief is filed on the motion for acquittal.

The Court: Do you have the brief prepared now?

Mr. Nelson: Yes, your Honor.

The Court: Well, this will be the first—I take it counsel for the defendant will file a brief, then upon the motion to acquit, which will also cover the motion to dismiss that has been made before another judge——

Mr. Edises: Yes, I presume, your Honor, it would not be necessary to formally renew the motion to dismiss at this time.

The Court: That's right.

Mr. Edises: But I shall cover both the matters brought in for the first time at the trial, and also the matters covered in the motion to dismiss.

The Court: And also upon your motion to purge the contempt, that will be included.

Mr. Edises: Yes.

The Court: How long do you desire?

Mr. Edises: Would one week be agreeable to your Honor?

The Court: Any time you want. [96]

Mr. Edises: I think my schedule——

The Court: Ten days?

Mr. Edises: Ten days probably would be the safer date; take us a week from Monday.

Mr. Nelson: Did I understand your Honor that his brief will be a reply to the one I have handed, and we will file a closing brief, or is your brief to be an opening brief?

Mr. Edises: In a sense it has both functions.

The Court: Of course, I haven't seen this brief that is here. Well, let us leave it this way. You file a brief in ten days.

How long do you desire to reply?

Mr. Edises: A week.

The Court: Ten days?

Mr. Nelson: Very well.

Mr. Edises: I suppose we may have the opportunity or privilege of requesting time to answer in the event that there are any new matters brought in?

The Court: All right. This is October 15.

The Clerk: October 25, your Honor, and November 4?

The Court: Well, I will continue it on my calendar until November 19 at 9:30 for submission if the briefs are then on file and if we haven't heard any motion by either side in the meantime for further briefs. November 19th, at 9:30. The Court is in recess. [97]

Mr. Edises: Your Honor, may the present bail be continued?

The Court: Yes. [97-A]

ment, which declares in part that no person shall be compelled in any criminal case to be a witness against himself.

The privilege afforded extends not only to answers that would in themselves support a criminal prosecution under a federal criminal statute, but likewise embraces those which would furnish a link in a chain of evidence needed to prosecute the claimant for a federal offense. The cases hold that this protection must be confined to instances where the witness has reasonable cause to apprehend danger from a direct answer. The cases hold that the entire setting must be taken into consideration in determining whether the constitutional guaranty is validly invoked.

In the present case I have examined the transcript of the evidence before the Committee, have heard the evidence in this case, and have read the briefs filed by counsel. It is apparent to the Court that in this matter the defendant could not possibly have any fear of prosecution by his answering the question as to where he was employed.

At the time of the hearing the defendant himself stated that one reason why he refused to answer the question was "because the Committee is fully aware of where I am employed and I don't see any purpose." Later the defendant again said, [100] when asked about his place of employment, "I am not going to be a party to dragging my employer into this smear campaign."

Again, later, he was asked, "Are you employed at the Illinois Glass Company, so that the record



will state it correctly," and the defendant again refused to answer the question upon the same ground.

Under all the circumstances of the case I am satisfied that the defendant had no reasonable cause to apprehend danger from a direct answer to the question. In fact, the defendant himself at the hearing stated that he did not believe that the answer would incriminate him.

The Court believes that his failure to answer the question, and to answer a pertinent question, was wilful and contemptuous.

There is another matter to be determined, and that is whether the offer of the defendant at the start of this case to answer the question previously addressed to him by the Committee purged the contempt. Counsel has presented to me no cases or law indicating that a contempt such as we have in this matter can thus be purged, and the Court finds that it cannot be so purged.

Therefore, the Court finds the defendant guilty of the charge set forth in the indictment.

Mr. Edises: Your Honor, may I request that execution be stayed for a period of, I would say, ten days? [101]

The Court: That what be stayed?

Mr. Edises: The imposition of—well, what I am concerned about is that the existing bail be continued and we be given opportunity to make whatever motions or take whatever action we feel appropriate.

The Court: The matter is on for sentence at this time.

Mr. Edises: I beg your pardon?

The Court: The matter is before me now for sentence.

Mr. Nelson: I think the motion is premature, your Honor.

Mr. Edises: Well, perhaps you are right about that. I will renew it.

Mr. Nelson: May I move at this time that your Honor pass sentence, if you are ready to do so?

The Court: The Court is about to impose sentence. Is there anything you desire to offer prior to sentence?

Mr. Edises: No legal matters at this time, your Honor.

The Court: The defendant having been convicted of the charge set forth in the information, to wit, a violation of Section 192 of Title 2 of the United States Code, it is the judgment of the Court that he be imprisoned in an institution to be selected by the Attorney General for a period of one month, and that he pay a fine in the sum of \$100.00.

Mr. Edises: Now, may I request that the execution of sentence be stayed for a reasonable time, your Honor?

The Court: Of what? [102]

Mr. Edises: I would say ten days, if that is agreeable.

The Court: I am perfectly willing to stay the execution of the sentence, but I wonder whether ten days is a proper time.

Mr. Edises: Well, five days would be sufficient.

The Court: Well, let's make it a week. Today is the 10th. Say the 17th?

Mr. Edises: That is satisfactory.

The Court: December 17th at 10:00 a.m.

Mr. Edises: May the defendant be continued at liberty upon his present bail?

The Court: He may remain on his present bail.

### Certificate of Reporter

We, Official Reporters and Official Reporters pro tem, certify that the foregoing transcript of 103 pages is a true and correct transcript of the matter therein contained as reported by us and thereafter reduced to typewriting, to the best of our ability.

/s/ KENNETH J. PECK,

/s/ R. D. NORTON.

[Endorsed]: Filed January 24, 1955. [103]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein:

Indictment.

Minutes of arraignment, dated July 26, 1954.

Defendant's motion to dismiss the indictment with exhibits attached.

Plaintiff's motion to strike.

Minutes of September 14, 1954.

Order, filed September 17, 1954.

Minutes of plea, dated September 28, 1954.

Waiver of jury trial.

Minutes of December 10, 1954.

Notice of appeal.

Judgment and commitment.

Stay of execution of sentence.

1 Volume of Reporter's Transcript.

Plaintiff's Exhibits Nos. 1 through 8, inclusive.

Defendant's Exhibits A through S, inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 25th day of January, 1955.

[Seal]

C. W. CALBREATH,

Clerk;

By /s/ WM. C. ROBB,

Deputy Clerk.



[Endorsed]: No. 14638. United States Court of Appeals for the Ninth Circuit. Ole Fagerhaugh, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed January 25, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

The United States Court of Appeals  
for the Ninth Circuit

No. 14638

At a Stated Term, to wit: The October Term, 1954,  
of the United States Court of Appeals for the  
Ninth Circuit, held in the Courtroom thereof,  
in the City and County of San Francisco, in  
the State of California, on Monday, the twenty-  
seventh day of December, in the year of our  
Lord one thousand nine hundred and fifty-  
four.

Present: Honorable William Denman, Chief Judge,  
Presiding;

Honorable Homer T. Bone, Circuit Judge;

Honorable William E. Orr, Circuit Judge.

OLE FAGERHAUGH,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER SUBMITTING AND GRANTING  
MOTION FOR ADMISSION TO BAIL

Ordered motion of appellant for admission to bail  
presented by Mr. Bertram Edises, counsel for ap-  
pellant, and by Mr. Richard C. Nelson, Assistant  
United States Attorney, counsel for appellee, and  
submitted to the court for consideration and deci-  
sion.

On consideration whereof, it is now here ordered by this court that appellant be admitted to bail in the amount of Five Hundred Dollars (\$500.00), cash or bond, the bail to be conditioned as required by law, and to be approved by the United States Attorney and the District Judge of the Northern District of California, and filed with the clerk of said District Court.

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[Title of Court of Appeals and Cause.]

No. 14,638

STATEMENT OF POINTS ON WHICH  
APPELLANT RELIES

1. The court below erred in holding that a witness who had been charged under oath with being a leading Communist trade unionist was not justified in invoking the self-incrimination clause of the Fifth Amendment when asked where he is employed.

2. The court below erred in holding, in effect, that the privilege against self-incrimination may not be invoked by a witness who avows he is guilty of no crime.

3. The court below erred in holding that a witness who is charged with contempt of a Congressional subcommittee for refusing to answer a question may not purge the contempt by offering to answer the question in open court, or wherever and whenever the subcommittee may request.

4. The court below erred in holding a witness to be in contempt for refusing to answer a question asked by a Congressional subcommittee, where the evidence shows conclusively that the subcommittee was fully and officially aware of the answer, and asked the question for the purpose of harassing the witness and subjecting him to extralegal punishment by bringing about loss of his employment.

5. The court below erred in adjudging the appellant guilty of contempt of Congress on the basis of an incomplete and incorrect and unauthenticated transcript of the record of the testimony purporting to demonstrate the contempt.

6. The court below erred in invading the appellant's right to privacy regarding his personal affairs.

7. The Congressional subcommittee was acting in excess of and beyond its powers, and with respect to a matter not pertinent to any legitimate subject of inquiry.

8. The Congressional subcommittee sought to abridge the appellant's right of free speech.

Respectfully submitted,

EDISES, TREUHAFT,  
GROSSMAN & GROGAN,

By /s/ BERTRAM EDISES,  
Attorneys for Appellant.

[Endorsed]: Filed January 25, 1955.